



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in Ireland

CHARTER COUNTRY-SHEET

“**[N]ational authorities** (judicial authorities, law enforcement bodies and administrations) are **key actors** in giving concrete effect to the rights and freedoms enshrined in the Charter”

European Parliament (2015), Resolution on the situation of fundamental rights in the European Union (2013-2014) 2014/2254(INI)), Strasbourg, 8 September 2015, recital P.

The Charter of Fundamental Rights of the European Union is the EU's bill of human rights. It contains 50 articles with substantive rights and principles, followed by four articles with general provisions. Member States have a duty to respect the rights and observe the principles of the Charter whenever they are acting within the scope of binding EU law. Where the Charter provisions are sufficiently precise and unconditional, they can have a direct effect at the national level – for instance in national courtrooms. Charter provisions that are 'principles' can only be invoked before a court if implemented by legislative or executive acts.

Member States have an explicit duty to promote the Charter's application. This country-sheet supports that effort by giving examples of the Charter's use and highlighting how it adds value.

The EU Charter as an obligation: when are Irish authorities required to apply it?

- ★ Given that EU law is predominantly implemented at national level, national judges, parliamentarians, government officials and legal practitioners are core 'Charter agents' on whom the EU system relies.
- ★ The EU Charter of Fundamental Rights primarily addresses the EU itself. It binds EU Member States "only when they are implementing Union law" (Article 51 of the Charter). However, a significant part of national law- and policymaking is directly or indirectly influenced by EU law. Wherever a legislative file, a judicial case or factual situation falls within the scope of binding EU law, the EU Charter applies and can be used by and invoked before national authorities.
- ★ It is not always easy to draw the borders of the Charter's field of application. The question of whether the Charter applies is central to the proper implementation of EU law. FRA's handbook on *Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level* provides some guidance on this issue.



How is the Charter used in Ireland?

All EU Member States apply the EU Charter – but not always to its full potential. The Charter is sometimes referred to in the context of upcoming legislation or debates in parliaments. National authorities and courts also sometimes refer to the Charter in their decisions and rulings. Examples from Ireland include:

★ National courts: field of application (Article 51)

In 2014 (**Case IEHC 83**), the Charter played a role in the Irish judicial review of decisions made by the Minister of Justice and Equality in relation to R.O.'s asylum claim. R.O. claimed that, as a result of the CJEU's judgment in *Ruiz Zambrano* (C-34/09), Ireland was precluded from refusing R.O. a right of residence in Ireland, in so far as that decision would deprive his children of the genuine enjoyment of the substance of their rights to family life. The *Zambrano* line of argument (no deportation of a citizen child's non-national parent if that expulsion deprives the child of its genuine enjoyment of EU citizens' rights) was not accepted, on the basis that the complainant was not the natural father of the child who is an EU citizen and neither did a legal relationship exist between the mother and R.O. The Irish High Court held the Charter not to be applicable to this case, including because the deportation at stake was "pursuant to domestic legislation and is not in the course of the implementation of European Union law".

★ National case law: respect for private and family life (Article 7) and protection of personal data (Article 8)

In 2014, in *Maximillian Schrems v. Data Protection Commissioner* (**Case [2014] IEHC 310**), the High Court dealt with the question of the obligation to interpret relevant EU provisions in light of the Charter. The court discussed the applicability of the EU Charter rights of respect for private and family life (Article 7) and protection of personal data (Article 8), confirming that the right to protection of privacy was interfered with, according to both Irish national law and the Charter's fundamental principles: "The position under EU law is equally clear and, indeed, parallels the position under Irish law, albeit perhaps that the safeguards for data protection under the EU Charter of Fundamental Rights thereby afforded are perhaps even more explicit than under our national law."

The High Court decided to refer to the CJEU for a preliminary ruling, asking if the interpretation of pre-Lisbon instruments of the EU should be re-evaluated in the light of the subsequent adoption of the Charter of Fundamental Rights.

★ Parliamentary debate: general reference to the EU Charter

In 2017, during a parliamentary debate on the Good Friday Agreement, in response to a question about how equivalent human rights protection in Ireland and Northern Ireland could be ensured in relation to Brexit, Deputy Charles Flanagan referred to the Charter. "The Charter provides an important and effective common reference on rights across the island of Ireland, as it does across the EU as a whole. [...] The British Government expressly indicated that the provisions of the EU Charter of Fundamental Rights in Northern Ireland will not be applied as part of British law after the UK leaves the EU. This may require that a consideration may be given to alternative means of ensuring the coherence of rights frameworks across the island of Ireland."

Irish Parliament, **Questions on the Good Friday Agreement, Dáil Éireann Debate, Vol. 947, No. 1.**

The Irish constitution

The Constitution of Ireland

- ★ The document was adopted in 1937. It has 50 articles and a preamble, including nine provisions that protect fundamental rights.
- ★ The section on 'Fundamental Rights' includes the Articles 40-44. These are mainly civil and political rights, with few social, cultural and economic rights recognised.
- ★ Aside from the explicit rights in the text of the constitution, Irish courts have adopted an 'unenumerated' human rights doctrine, providing for implied rights that are not explicitly mentioned in the constitution.

The constitution, the EU Charter and the ECHR

- ★ The Charter is not explicitly referred to in the constitution, but Article 29 refers to the primacy of EU law. The **European Convention on Human Rights** is not referenced in the text of the constitution.

The Charter's added value

The Charter is a legally binding document. It includes civil and political rights as well as economic, social and cultural rights. Moreover, it benefits from the strength of EU law, which often has direct effect and, in principle and unlike international law, must be granted supremacy over national law. However, in many contexts it may not be possible to directly invoke the Charter – for instance, because the respective Charter provision is a principle and not a right and was not implemented by a legislative or executive act; or is otherwise not directly applicable; or does not apply at all because the case at hand falls outside the scope of EU law. In any case, the Charter increases the visibility of rights. It explicitly spells out rights and principles that are often not expressly laid out in other international human rights documents, such as the ECHR (as shown in Figure 1). Unlike the Council of Europe's European Social Charter, the EU Charter does not offer the possibility to be bound only by selected provisions; Member States are bound by all of its provisions.

Given the breadth of rights explicitly covered by the Charter, it can help to increase the visibility of rights at national level. Moreover, national courts do sometimes use the Charter to interpret or further develop national law, even outside the scope of EU law.

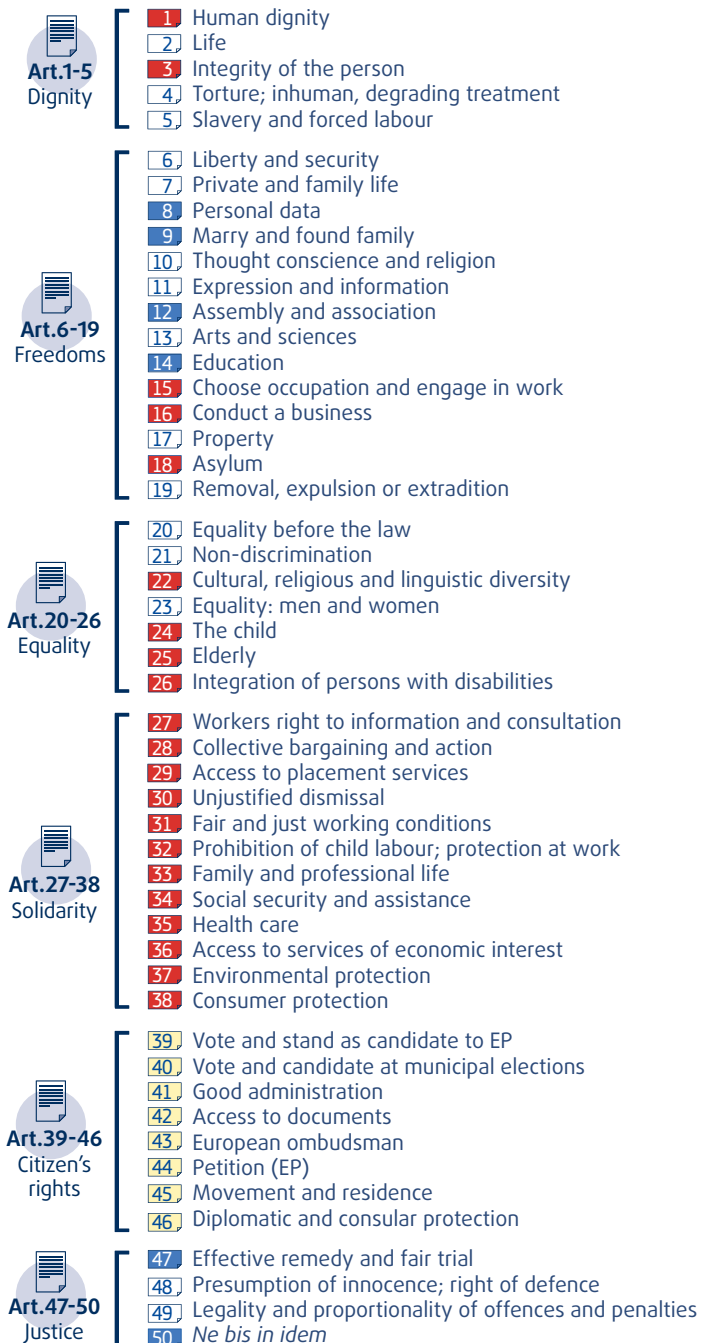
- No ECHR equivalent
- More extensive than ECHR
- Equivalent protection to ECHR
- EU context-specific

Note: The figure is based on the Explanations on the Charter and a textual comparison of the two documents in order to show how the Charter increases the visibility of entitlements (some of the rights not explicitly contained in the ECHR are covered by the case law, which however is less visible to a non-expert).

Source: FRA, 2018

Figure 1: What rights are covered? Comparing the Charter and the ECHR

Charter articles and text of the ECHR: differences and equivalence in coverage



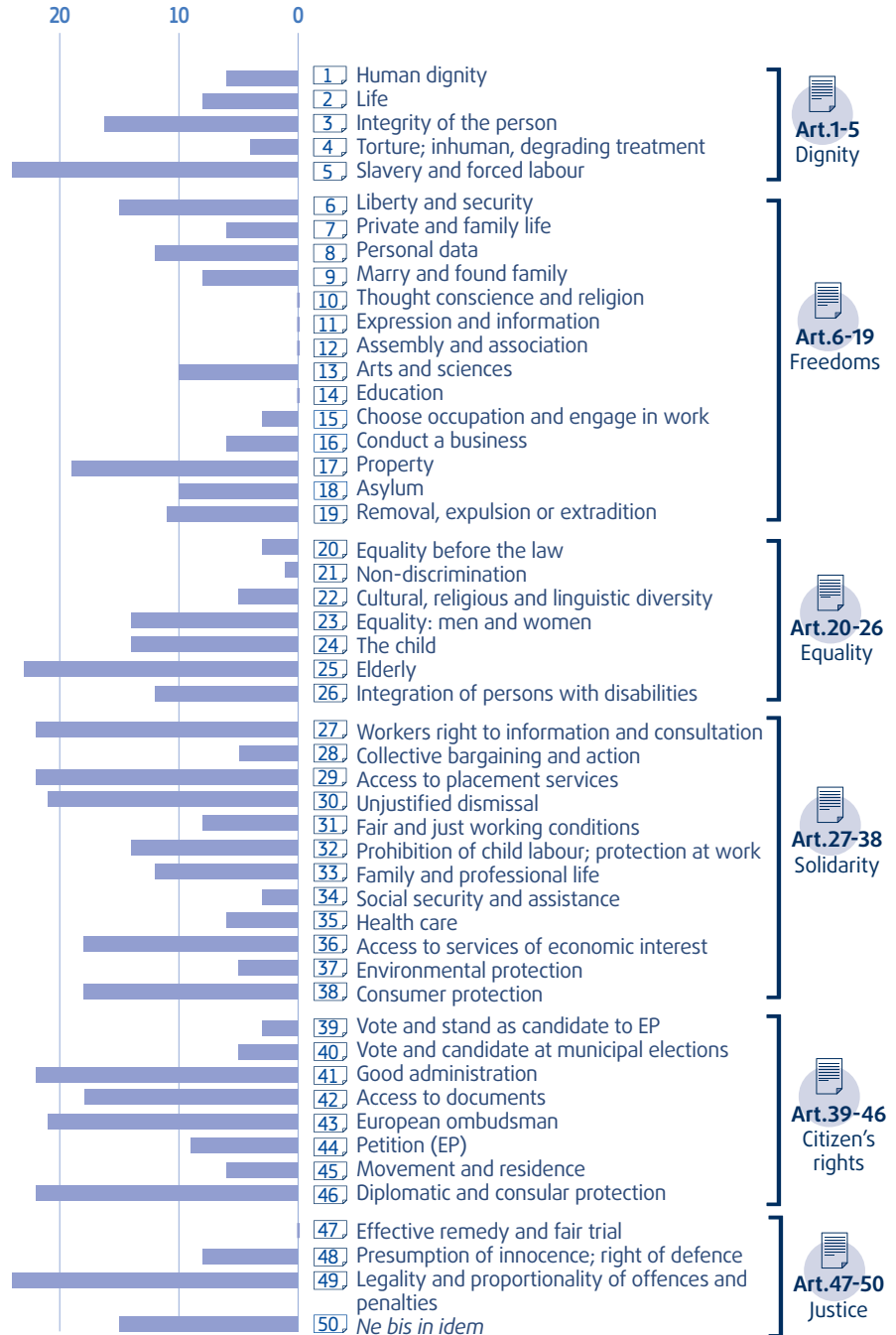
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Ireland, some Charter rights appear not to be fully mirrored in national constitutional law – for instance, the protection of personal data (Article 8), freedom of the arts and sciences (Article 13), workers’ right to information and consultation within the undertaking (Article 27), right to collective bargaining and action (Article 28), right of

access to placement services (Article 29), right to good administration (Article 41), and the right to access of documents (Article 42).

The absence of certain rights from a constitutional text by no means implies that they are not protected by the legal order. However, explicit guarantees in a constitutional text make these rights more visible and so also more accessible. In this sense, the Charter can strengthen less well-known rights.

Figure 2: Does the Charter add to the visibility of rights? Comparing the Charter and national constitutions

Number of EU Member States that do not have equivalent/explicit provisions for this Article in their constitutional texts



Note: The figure is based on a textual comparison of the Charter and written constitutional law of the EU Member States (excluding the United Kingdom) in order to show under which provisions the Charter is most likely to increase the visibility of entitlements. EU-specific entitlements (the Charter provisions that are in Figure 1 marked in pale yellow) were considered as reflected in national constitutions if a comparable provision could be identified (for instance a constitutional provision concerning a national Ombudsperson).

Source: FRA, 2018

The EU Charter of Fundamental Rights: *a young instrument*

- ★ A European Convention drafted the Charter. The Convention was composed of 15 representatives of the then 15 EU Member States, 46 parliamentarians (16 members of the European Parliament and 30 members of national parliaments), and one European Commission representative. The Convention also consulted civil society.
- ★ The European Parliament, the European Commission and the Council of the EU solemnly proclaimed the Charter in December 2000.
- ★ With the entry into force of the Lisbon Treaty on 1 December 2009, the Charter became legally binding. It is a relatively new legal instrument that is increasingly used at national level.

Further information

- ★ **The EU Charter**, available on EUR-Lex.
- ★ The **Explanations relating to the Charter of fundamental rights**, by the Presidium of the European Convention.
- ★ **Charterpedia** – a FRA webspace bringing together Charter-related information, including national case law.
- ★ **EU Charter app** – a FRA app to access EU Charter rights anytime, anywhere, as well as national and CJEU case law using the Charter.
- ★ FRA (2018), **Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level**, Luxembourg, Publications Office.
- ★ FRA (2018), Opinion 4/2018, **Challenges and opportunities for the implementation of the Charter of Fundamental Rights**.
- ★ **Thematic FRA-CoE/ECtHR handbooks on European law**: Non-discrimination (2018), Asylum (2014), Data protection (2018), Children's rights (2015), and Access to justice (2016).
- ★ FRA's annual *Fundamental Rights Report* contains a **specific chapter** dedicated to the use of the Charter at national level.
- ★ European Commission, **Annual reports on the application of the EU Charter of Fundamental Rights**.

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