in Lithuania

"[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"

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 Lithuania?

The Lithuanian constitution

The Constitution of the Republic of Lithuania

★ It was adopted in 1992.
★ It contains 14 chapters and 154 articles.
★ The chapter devoted to human rights (Chapter II, The Human Being and the State) contains 20 articles; additional rights are included in other chapters of the constitution, which also offers socio-economic rights.

The constitution, the EU Charter and the ECHR

★ Neither the EU Charter of Fundamental Rights nor the European Convention on Human Rights are referred to explicitly in the text of the constitution.

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 Lithuania include:

★ National courts: right to good administration (Article 41) and right to an effective remedy and to a fair trial (Article 47)
The Supreme Administrative Court (Case A858-47/2014) overruled a decision of the Ministry of Foreign Affairs. The court disagreed with the ministry’s view on its discretion when deciding to freeze money. It underlined that Article 41 establishes the right to good administration, one of its components being the duty of administration to give reasons for its decisions. The competent national authority does not enjoy absolute discretion and must exercise its powers in a manner that upholds the rights provided for in Article 47 of the Charter.

★ National courts: right to good administration (Article 41)
In another case (Case A822-1265/2014) in 2014, the Supreme Administrative Court referred to Article 41 of the EU Charter as an “expression of the common legal heritage” that can serve as an additional source for the interpretation of national law.

★ National legislation: presumption of innocence and right of defence (Article 48)
In 2015, a draft law introduced by the president of Lithuania stipulated, among other things, that an alien’s request for a residence permit shall not be considered if a relevant institution has received information that the alien is suspected of committing a crime abroad. The European Law Department of the Ministry of Justice issued an opinion, pointing out that such a provision may contravene the presumption of innocence (Article 48). The final law does not contain the criticised provision.
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 by selected provisions; Member States are bound by all of its provisions.

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

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

- **Art.1-5 Dignity**
  - Human dignity
  - Life
  - Integrity of the person
  - Torture; inhuman, degrading treatment
  - Slavery and forced labour

- **Art.6-19 Freedoms**
  - Liberty and security
  - Private and family life
  - Personal data
  - Marry and found family
  - Thought conscience and religion
  - Expression and information
  - Assembly and association
  - Arts and sciences
  - Education
  - Choose occupation and engage in work
  - Conduct a business
  - Property
  - Asylum
  - Removal, expulsion or extradition

- **Art.20-26 Equality**
  - Equality before the law
  - Non-discrimination
  - Cultural, religious and linguistic diversity
  - Equality: men and women
  - The child
  - Elderly
  - Integration of persons with disabilities

- **Art.27-38 Solidarity**
  - Workers right to information and consultation
  - Collective bargaining and action
  - Access to placement services
  - Unjustified dismissal
  - Fair and just working conditions
  - Prohibition of child labour; protection at work
  - Family and professional life
  - Social security and assistance
  - Health care
  - Access to services of economic interest
  - Environmental protection
  - Consumer protection

- **Art.39-46 Citizen’s rights**
  - Vote and stand as candidate to EP
  - Vote and candidate at municipal elections
  - Good administration
  - Access to documents
  - European ombudsman
  - Petition (EP)
  - Movement and residence
  - Diplomatic and consular protection

- **Art.47-50 Justice**
  - Effective remedy and fair trial
  - Presumption of innocence; right of defence
  - Legality and proportionality of offences and penalties
  - Ne bis in idem

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
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.

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 Lithuania, some Charter rights appear not to be fully mirrored in national constitutional law – for instance – the right of access to placement services (Article 29), prohibition of child labour and protection of young people at work (Article 32) 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**

<table>
<thead>
<tr>
<th>States that do not have equivalent/explicit provisions for this Article in their constitutional texts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 1-5 Dignity</td>
</tr>
<tr>
<td>Art. 6-19 Freedoms</td>
</tr>
<tr>
<td>Art. 20-26 Equality</td>
</tr>
<tr>
<td>Art. 27-38 Solidarity</td>
</tr>
<tr>
<td>Art. 39-46 Citizen’s rights</td>
</tr>
<tr>
<td>Art. 47-50 Justice</td>
</tr>
</tbody>
</table>

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’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.