



# THE EU CHARTER OF FUNDAMENTAL RIGHTS

## in the Netherlands

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 Dutch 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 the Netherlands?

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 the Netherlands include:

### ★ National legislation: right to marry and right to found a family (Article 9); right to property (Article 17)

In 2015, the government appeared to accept **advice received from the National Commission** on international private law during the review of a draft law against forced marriages. The draft legislation did not recognise marriages between cousins concluded in other countries, which the commission identified as a violation of the right to marry (Article 9). In 2017, advice by the Council of State in relation to draft legislation on financial oversight referred to Article 17 of the Charter. The Council advised the government to better motivate certain elements of the law in light of the right to property. The government took up this advice and further elaborated on the relationship with the right to property in the commentary to the law.

### ★ Parliamentary debate: freedom to conduct a business (Article 16)

In 2016, the Charter was also used to identify and illustrate (unintended) effects of a newly adopted law by a Member of Parliament. The parliamentarian **asked** if a new act on the deregulation of employment relationships might in practice lead to violations of Article 16 (the freedom to conduct a business). The new law was introduced to prevent employers from making use of sole traders (business entities owned and run by one natural person) in a manner that actually resembles employment relationships. According to the Member of Parliament, many sole traders have now lost their jobs because employers avoid approaching them, so as not to be accused of hiring them as employees. The State Secretary of Finance responded that the law did not impede the freedom to conduct a business and in any case that the Charter did not apply because the law did not concern the implementation of EU law.

### ★ National courts: right not to be tried or punished twice in criminal proceedings for the same criminal offence (Article 50)

In 2017, the Supreme Court dealt with a case (**ECLI:NL:HR:2017:241**) in which a man was accused of having purposely used wrong eartags for a cows to use the animals for a different aim than allowed. Since he already had to face a withdrawal of subsidies, the question arose as to whether someone can be fined for an offence when they already had to face an administrative measure for their acts, or if this would be in violation of the right not to be tried or punished twice for the same criminal offence (*ne bis in idem*). In this context, the court dealt with Article 50 of the Charter in a detailed manner and found no violation of said article, as the administrative sanction did not represent a penal measure.

## The Dutch constitution

### The Constitution of the Kingdom of the Netherlands

- ★ It was adopted in 1815 and was last revised in substance in 1983.
- ★ It contains eight chapters and 142 articles. The first chapter of the constitution is a bill of rights consisting of 23 articles. It is entitled '*Grondrechten*' and contains several fundamental rights, including socio-economic rights.
- ★ Chapter One dates from the last major constitutional reform, which took place in 1983. Before 1983, fundamental rights were scattered throughout the chapters.

### The constitution, the EU Charter and the ECHR

- ★ The constitution does not refer to the EU Charter or the **European Convention of Human Rights**.
- ★ In general, the constitution refers to provisions of treaties and resolutions by international institutions. Articles 93 and 94 of the constitution make these provisions binding in the national order.

# 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

### Art.1-5 Dignity

- 1 Human dignity
- 2 Life
- 3 Integrity of the person
- 4 Torture; inhuman, degrading treatment
- 5 Slavery and forced labour

### Art.6-19 Freedom

- 6 Liberty and security
- 7 Private and family life
- 8 Personal data
- 9 Marry and found family
- 10 Thought conscience and religion
- 11 Expression and information
- 12 Assembly and association
- 13 Arts and sciences
- 14 Education
- 15 Choose occupation and engage in work
- 16 Conduct a business
- 17 Property
- 18 Asylum
- 19 Removal, expulsion or extradition

### Art.20-26 Equality

- 20 Equality before the law
- 21 Non-discrimination
- 22 Cultural, religious and linguistic diversity
- 23 Equality: men and women
- 24 The child
- 25 Elderly
- 26 Integration of persons with disabilities

### Art.27-38 Solidarity

- 27 Workers right to information and consultation
- 28 Collective bargaining and action
- 29 Access to placement services
- 30 Unjustified dismissal
- 31 Fair and just working conditions
- 32 Prohibition of child labour; protection at work
- 33 Family and professional life
- 34 Social security and assistance
- 35 Health care
- 36 Access to services of economic interest
- 37 Environmental protection
- 38 Consumer protection

### Art.39-46 Citizen's rights

- 39 Vote and stand as candidate to EP
- 40 Vote and candidate at municipal elections
- 41 Good administration
- 42 Access to documents
- 43 European ombudsman
- 44 Petition (EP)
- 45 Movement and residence
- 46 Diplomatic and consular protection

### Art.47-50 Justice

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

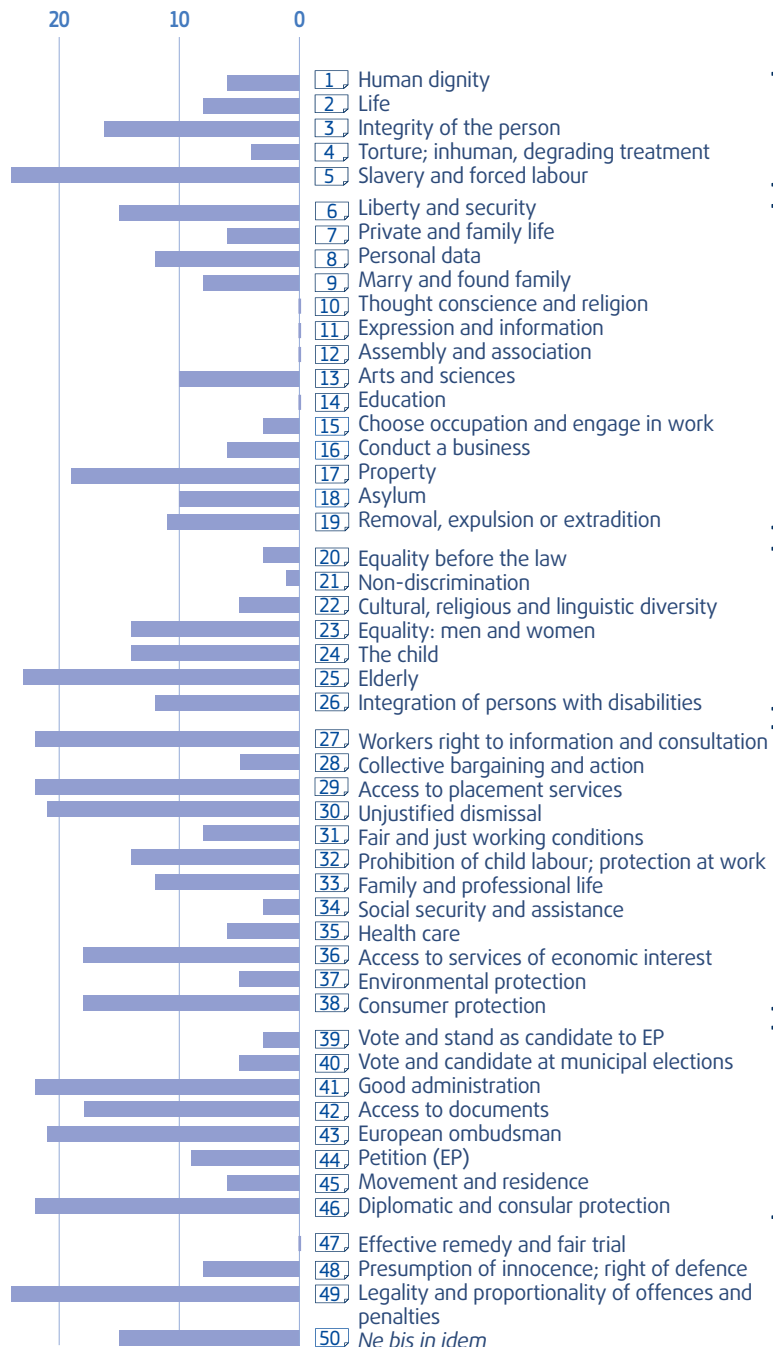
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in the Netherlands, many Charter rights appear not to be fully mirrored in national constitutional law – for instance, human dignity (Article 1), right to marry and right to found a family (Article 9), freedom of the arts and sciences (Article 13), cultural, religious and linguistic diversity (Article 22), rights of the child (Article 24), rights of the elderly (Article 25), integration of persons with disabilities (Article 25), right to collective bargaining and action (Article 28), right of access to placement services (Article 29), protection in the event of unjustified

dismissal (Article 30), prohibition of child labour and protection of young people at work (Article 32), family and professional life (Article 33), consumer protection (Article 38), right to good administration (article 41) and the right not to be tried or punished twice for the same criminal offence (Article 50).

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

Art.1-5  
Dignity

Art.6-19  
Freedoms

Art.20-26  
Equality

Art.27-38  
Solidarity

Art.39-46  
Citizen's rights

Art.47-50  
Justice

# 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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ISBN 978-92-9474-135-6

doi:10.2811/182051

TK-04-18-620-EN-N



Publications Office