



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in the United Kingdom

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 British 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. This is without prejudice to **Protocol 30** on the application of the Charter to Poland and the United Kingdom (as interpreted by the Court of Justice of the European Union (CJEU), see C-411/10, **EU:C:2011:865**).
- ★ 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 United Kingdom?

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 United Kingdom include:

★ National courts: rights of the child (Article 24)

In a 2016 case (**Case UKUT 106 (IAC)**), Article 24 (3) of the EU Charter formed a successful ground of appeal and provided a free-standing right in the context of immigration law. The court dealt with a case concerning a Nigerian national who had continuously resided in the United Kingdom for 25 years. His two daughters were both British citizens, aged 13 and 11. He received a deportation order on grounds of public policy. The court of appeal found that the court of first instance had failed to acknowledge the existence of a right conferred on both of the appellants' children by the Charter. The third paragraph of Article 24 states: "Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

★ National courts: right to an effective remedy and to a fair trial (Article 47) and scope and interpretation of rights and principles (Article 52 (1))

The Supreme Court (**Case UKSC 2015/0233**) noted that fees introduced in 2013 by employment tribunals contravened EU law's guarantee of an effective remedy before a tribunal as enshrined in Article 47 of the Charter. Because the fees were unaffordable in practice, the Fees Order was deemed a disproportionate limitation on Article 47 in light of Article 52 (1) of the Charter (this provision lays down the criteria under which limitations of a Charter right can be justified).

★ Parliamentary debate: general reference to the Charter

The Charter was also referred to in the context of the United Kingdom's withdrawal from the EU, during a debate concerning the European Union (Withdrawal) Bill. A Member of Parliament stressed that the envisaged bill did not allow the rights enshrined in the Charter to be retained in British law, and called for an extensive discussion of the topic:

"The Hon. and Learned Lady is ably illustrating why we need a debate about this. Despite the fact that the EU charter of fundamental rights will not be part of domestic law, she thinks that those rights will, nevertheless, still be protected. Let us have a debate about how we are going to do that. That is my point. On the face of the Bill, it looks like these rights will be lost."

United Kingdom, UK Parliament, House of Commons (2017), **'Emergency debate (Standing Order No. 24) – Volume 627'**, 17 July 2017.

British Common Law

Constitutional law

- ★ The United Kingdom has no codified constitution. In the absence of such an instrument, the two main sources of constitutional law in the United Kingdom are legislation and judicial precedent (case law).
- ★ Regarding fundamental rights, one of the most important pieces of legislation is the Human Rights Act 1998, which gives further effect to the rights contained in the **European Convention on Human Rights (ECHR)** and those protocols ratified by the United Kingdom. Accordingly, in domestic courts, individuals can make complaints relating to violations of their Convention rights by a public authority.
- ★ However, whereas the Human Rights Act "does not permit the disapplication of any statutory provision [...] EU law requires it where it concerns the material scope of EU law" – a fact that shows the strength of the Charter compared to the ECHR (see **Employment Appeal Tribunal, Case UKEAT 0401_12_0410**, judgment of 4 October 2013).

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.

- 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

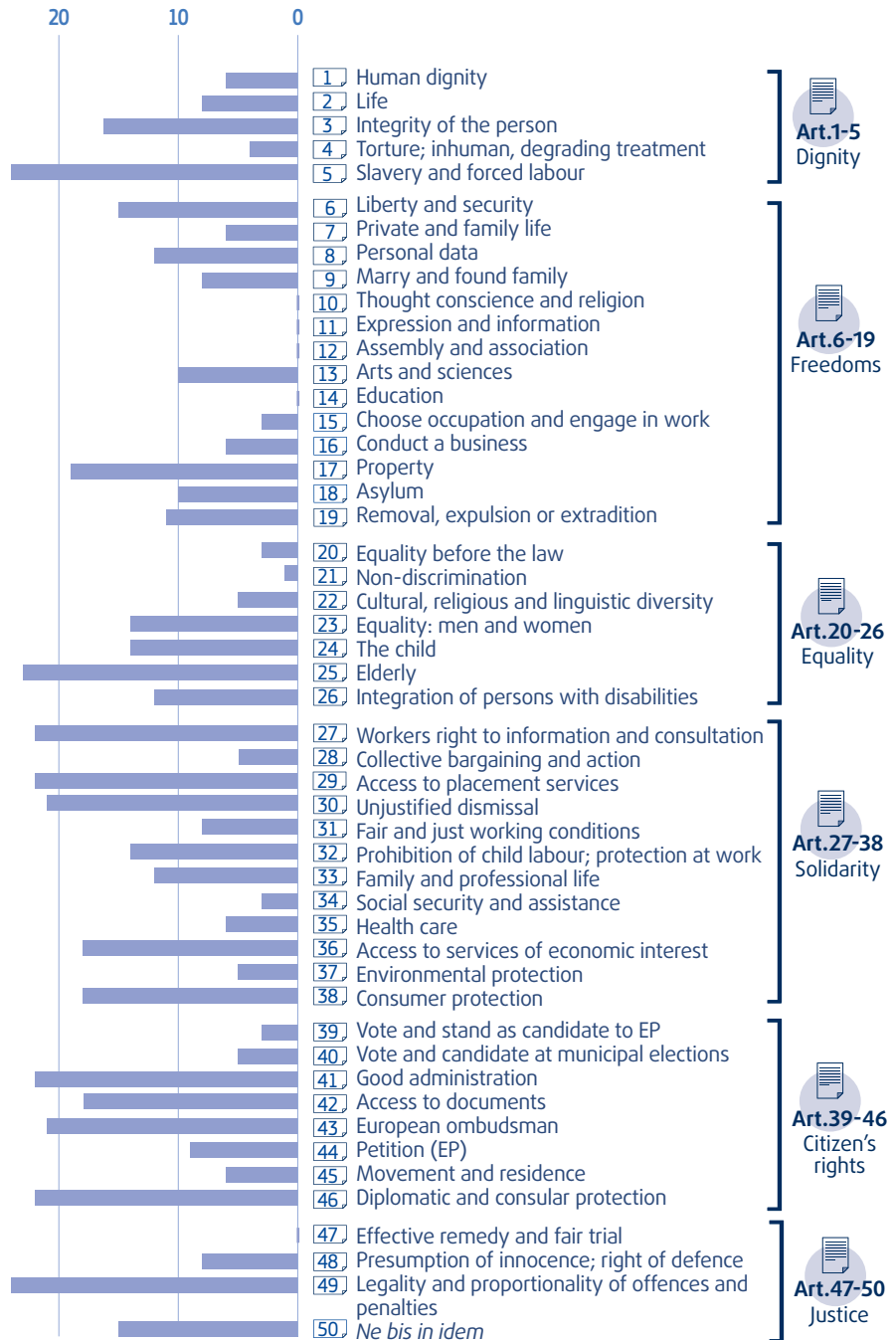
- 47 Effective remedy and fair trial
- 48 Presumption of innocence; right of defence
- 49 Legality and proportionality of offences and penalties
- 50 *Ne bis in idem*

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. This is especially relevant for EU Member States that, unlike the United Kingdom, have a written constitution.

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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© FRA, 2019
ISBN 978-92-9474-202-5
DOI:10.2811/953141
TK-04-18-628-EN-N



Publications Office