

The EU Charter of Fundamental Rights on its 10th anniversary: views of civil society and national human rights institutions



2009 - 2019

The Charter is most effective, and has a real impact on people's lives, when parliaments, governments and courts at local, regional and national levels all actively apply it. The national sphere is particularly relevant. A strong fundamental rights architecture and committed national governments and parliaments are key to letting the Charter unfold its potential at this level. Civil society organisations (CSOs) and national human rights institutions (NHRIs) are also crucial given their contributions to the protection and promotion of Charter rights.

But, 10 years after it became legally binding, the Charter's potential is not being fully realised at national level, a new consultation by the EU Agency for Fundamental Rights (FRA) underscores. The consultation confirms FRA's assessment in its Fundamental Rights Report 2019 that more needs to be done to promote the Charter's use.

More specifically, the consultation – which reached out to CSOs that participate in the agency's Fundamental Rights Platform and are active in the area of human rights – shows that CSOs themselves do not make sufficient use of the Charter. Moreover, few CSOs are aware of government policies promoting the Charter's implementation. They see training as key to improving the situation – a view shared by EU-based NHRIs separately interviewed by FRA. Many civil society organisations also believe that implementation at national level could be strengthened through more funding, stricter monitoring and better outreach by the EU to national actors.

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1. Scope of the paper

FRA's *Fundamental Rights Report 2019*¹ focused on how courts, governments and parliaments use the Charter. It shows that there are some positive trends, particularly amongst the judiciary. However, it also makes clear that the Charter is still not used to its full potential at national level.

This paper focuses on the use of the Charter by civil society organisations (CSOs) and national human rights institutions (NHRIs), which are key actors in the Charter's 'enforcement chain'. It is based on a consultation carried out by FRA amongst civil society organisations active in the field of fundamental rights and on preliminary findings from its research on NHRIs.²

A 'Charter consultation' amongst civil society organisations

FRA sent a questionnaire on the use of the Charter to 753 CSOs that participate in the agency's [Fundamental Rights Platform](#) (FRP). The FRP brings together a wide range of civil society organisations (especially non-governmental organisations), active in the field of fundamental rights, ranging from grassroots organisations to European umbrella networks. FRA later extended the consultation to the liaison group of the European Economic Social Committee (four participants) and to member organisations of umbrella organisations (two participants).

The consultation first asked respondents about their use of the Charter; 153 CSOs answered these questions. In the second section, 133 organisations provided information on how the Charter is used in the country where their organisation is based. In total, 128 CSOs answered all questions, including those asking for background information on their organisation.

These 128 organisations are based in at least 20 different Member States.* More than half declare that they are active on the national level (57 %) and on the EU level (53 %), and slightly less than half that they are active on the international level (41 %).** Four out of five organisations are non-governmental organisations (81 %). Two thirds are active in the area of advocacy (68 %), and slightly less indicated they are involved in education (63 %).*** Most of the organisations are small. Slightly more than half have at most 15 paid employees (53 %); 20 out of 128 have no paid employee at all. About two third of the organisations have no or at most 15 volunteers (41 %).

* These and the remaining results presented in this box refer to replies out of all respondents (n=128).

** Organisations could indicate more than one level.

*** Organisations could indicate more than one area.

2. Use of the Charter by CSOs

Civil society organisations play an important role in the protection and promotion of fundamental rights. They can hold those in power accountable for delivering on their commitments, and advocate for new laws and policies to fulfil their fundamental rights obligation.³ They do this through advice, monitoring, (strategic) litigation, awareness raising and fundamental rights education. The Charter can be a useful tool in this regard.

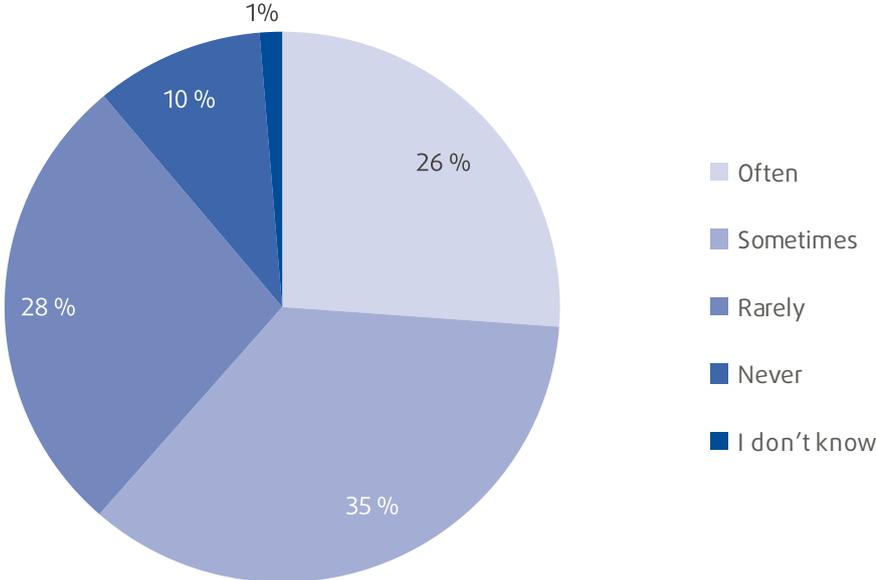
However, the CSO consultation conducted by FRA over the summer of 2019 shows that the Charter has not fully found its place in the daily work of civil society actors active in the area of fundamental rights. One out of 10 respondents indicate that their organisation never uses the Charter (10 %) and only about one out of four indicate that they use the Charter often (26 %). Moreover, about two thirds of the respondents believe that their organisation does not exploit the full potential of the Charter in its work (67 %).

1 FRA (2019), *Fundamental Rights Report 2019*, chapter on "EU Charter of Fundamental Rights and its use by Member States", pp. 43-64.

2 The full report on NHRIs is due in 2020.

3 FRA (2018), *Civil society space: Views of organisations*, contribution to the fourth Annual Colloquium on Fundamental Rights 2018.

Figure 1: Frequency of use of the Charter by CSOs in their regular work (%)



Notes: Of all respondents (n=153). Question A2: "How frequently does your organisation use the Charter in its regular work?"
 Source: FRA, 2019

CSOs believe that they are not using the Charter to its full potential, but nevertheless assume that they are the actors that use the Charter the most when compared to parliaments, governments, educational institutions, etc. Slightly more than half of the respondents think that, in their country, civil society is using the Charter the most compared to other entities (54 %). Slightly less than half think this is the case with NHRIs, equality bodies and Ombuds institutions (48 %). Less than a third of the respondents believe courts use the Charter the most often (29 %), and only one out of 10 indicate governments as actors that most use the Charter (10 %).⁴

The four areas where CSO respondents use the Charter the most are: advocacy (60 %), human rights education and training (54 %), awareness raising (45 %), and in research reports (37 %). The figures were lower for other uses, such as for legal advice and victim support (24 %), litigation (16 %) or media work (15 %).⁵

"First, the Commission, the European Parliament and the Council have been paying more attention to the Charter and its implementation and as civil society we followed this trend. Then awareness of NGOs, including at the national level has increased. The role of the FRA has also been instrumental in explaining the impact of the Charter."

Respondent in FRA's consultation of CSO representatives

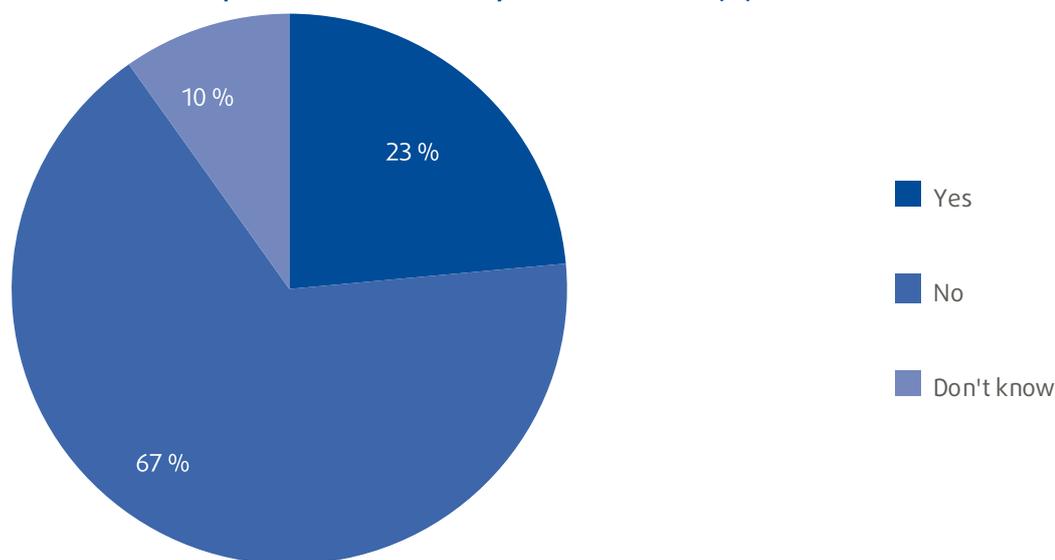
When asked how the Charter's role has developed over the past decade in different contexts, one third to half of the respondents could not answer the question. However, one third of the CSOs were of the view that the Charter has indeed found its way into courtrooms and is used in strategic litigation (32 %). Regarding the Charter's role in political and public debates, 42 % of the respondents say its role did not increase in the past ten years in their country, and 35 % think the same regarding the Charter's role in national policy- and law-making.⁶

4 Organisations could indicate more than one area. Of all respondents (n=133). Question B10: "Which actor uses the Charter most in your country?"

5 Organisations could indicate more than one actor. Out of all respondents (n=133). Question B10: "Which actor uses the Charter most in your country?"

6 Organisations could indicate more than one area. Out of all respondents (n=133). Question B14: "Did the role of the Charter increase in the following contexts over the last ten years in your country?"

Figure 2: Use of the full potential of the Charter by CSOs in their work (%)



Notes: Of all respondents (n=153). Question A4: "Do you think that your organisation exploits the full potential of the Charter in its work?"
Source: FRA, 2019

"The Charter has gained traction in well-informed, Europeanized and Brussels-oriented legal and political circles, but it has yet to emerge as the ultimate Charter of Rights for the ordinary citizen alike such Charters at national level."

Respondent in FRA's consultation of CSO representatives

When asked what the main hindrance was for them to make more use of the Charter, half of the respondents (55 %) pointed to their organisation's

limited resources. The Charter's standing in the national legal system is considered to be another hindrance by one-third (33 %) of the respondents.⁷ When asked whether the relevant staff in their organisation was sufficiently aware of the Charter, nearly half of the respondents said that this was not the case (46 %).⁸ This suggests that a lack of awareness within human rights CSOs also undermines the Charter's use.

3. Use of the Charter by NHRIs

NHRIs play a central role in the protection and promotion of fundamental rights at national level. They both form part of, and support, an effective justice system throughout Europe. As such, they are essential to the implementation of the Charter, as well as to access to justice for individuals.⁹ NHRIs use the Charter in their monitoring and reporting activities, especially when advising governments and parliaments. The mandate of some NHRIs also allows them to receive and investigate individual complaints alleging violations of fundamental rights, including those listed in the Charter.

In addition, NHRIs are active in human rights education and awareness-raising activities.¹⁰

FRA conducted research on national human rights institutions and equivalents in all EU Member States. For this paper, preliminary research results were used. When comparing their responses with those from CSOs in the FRP consultation, some similarities emerge. The vast majority of NHRIs indicate that they do consider the Charter in their work – but close to all admit that they are not yet fully exploiting its potential. According to the interviews conducted, NHRIs use the Charter most frequently when

7 Organisations could indicate more than one hindrance. Out of all respondents (n=153). Question A5: "What is the main hindrance/obstacle for your organisation to make more use of the Charter?"

8 Out of all respondents (n=153). Question A1: "Do you think that the relevant staff of your organisation is sufficiently aware of the Charter in order to make full use of its potential?"

9 ENNHRI (2017), *Implementation of the EU Charter of Fundamental Rights*.

10 For examples of how the Charter was used by NHRIs, see ENNHRI (2017), *Implementation of the EU Charter of Fundamental Rights*.

advising the government (or parliament), but also – similarly to CSOs – in the context of awareness raising. Nine NHRIs also indicated that they use the Charter in the processing of complaints, in the context of education and training, and in litigation. This of course depends on the respective mandates of the NHRIs, which substantially differ from country to country.

NHRIs can use the Charter in a variety of institutional and thematic contexts. The examples provided by the Commissioner for Human Rights in Poland illustrate this. The Commissioner indicated referring to a variety of Charter articles in his work, such as to:

- Article 7 (respect for privacy and family life) in a request to the Constitutional Court regarding the medical information system (case number K 33/13);
- Article 8 (protection of personal data) in a general address to the Minister of Health in the context of sensitive data in Poland’s medical information system;
- Article 12 (freedom of assembly and association) in an application to the Constitutional Court regarding the Law on Assemblies (case number K 44/12);
- Article 20 (equality) in the context of a case before the Constitutional Court concerning the Polish VAT Act and the higher taxation of e-books in relation to traditional books (case currently pending before the CJEU, case C-390/15);
- Article 21 (non-discrimination) in a general address to the Minister of Justice regarding the dismissal of notaries at the age of 70;
- Article 25 (rights of the elderly) and Article 26 (integration of persons with disabilities) in the Commissioner’s report on the accessibility of public institutions’ websites for disabled persons.

Interviewing NHRIs in the EU

FRA recently carried out interviews with accredited NHRIs and similar institutions in the 28 EU Member States as well as North Macedonia and

Serbia. The semi-structured interviews lasted between one to two hours. Some of the questions posed were about the NHRIs’ use of the Charter. The interviews will feed into an upcoming study on the situation of NHRIs in the EU (to be released in 2020). This paper only presents selected preliminary findings from the interviews.

Similarly, the Public Defender of Rights in Czechia provided examples of cases where the office not only referred to the Charter as one of many legal sources, but also used it in arguments presented in the respective cases. These concerned asylum and migration law;¹¹ problems with a blind person’s access to a particular public space with a guide dog;¹² limited number of players from other EU Member States in a sports club;¹³ and the dismissal of a policeman because he was HIV positive.¹⁴

Knowledge about the Charter can also be mainstreamed in educational activities and awareness-raising campaigns carried out by NHRIs. For instance, the Romanian Institute for Human Rights regularly organises the International University of Human Rights, where emphasis is also placed on the Charter. In 2017, the Institute developed new courses on topics such as:

- right to protection against violence, abuse, injuries, degrading or inhuman treatment. Non-violent communication;
- school discipline and the rights of the child;
- how to behave in our relationship with persons with disabilities. Attitudes and good practices;
- rights of old persons in long-term care;
- non-discrimination against the Roma community;
- safety of products and the right to protection;
- children’s right to education;
- journey in the Land of Children’s Rights.

11 Art. 6 (right to liberty and security) and Art. 47 (right to an effective remedy and a fair trial) in Case 3/2018/SZD; Art. 21 (non-discrimination) in Case 5/2015/SZD; Art. 18 (right to asylum) and Art. 47 in Case 7/2013/SZD.

12 Art. 26 (integration of persons with disabilities) in Case 31/2010/DIS.

13 Art. 21 (para. 2: discrimination based on nationality) in Case 135/2010/DIS.

14 Art. 26 (integration of persons with disabilities) and Art. 21 (non-discrimination) in Case 157/2012/DIS.

FRA and selected NHRIs cooperate on Charter training

Building on the training on the application of the Charter provided on 6 and 7 February 2018 for some 40 staff members from 25 NHRIs, FRA carried out a series of in-depth workshops. These were based on close cooperation between the NHRIs in Finland, Croatia and Poland, and thus allow for shared ownership and strong local rooting. One module targeted CSOs and another targeted civil servants and law-makers. For the latter group, FRA's [Handbook on the application of the Charter](#) is of key relevance – the handbook is being translated into all EU languages.

FRA asked NHRIs how the Charter's role has developed overall in the past decade in the areas of law and policy-making, and in case law and political and public debates. Many NHRIs (13) opined that the Charter's role in national case law has increased. But only around one third thought that the Charter is increasingly used in law- and policymaking (9 and 8 NHRIs, respectively). Finally, only one NHRI saw a positive trend regarding the Charter's use in political and public debates. In six Member States, the respondents of the respective NHRI or

equivalent institution did not see any increase in the Charter's role, while others saw an increase only in national case law.

"The Commission may provide legal assistance to individuals in bringing proceedings in ... [p]roceedings in which a declaration is sought that the State's law or practice is incompatible with the State's obligations under the Charter of Fundamental Rights of the European Union."

Irish Human Rights and Equality Commission (2017), Guidelines on applications for legal assistance

Interestingly, NHRIs and CSOs have different views on the hindrances to a more frequent and better use of the Charter. Sixteen of the NHRIs interviewed in the EU Member States consider the Charter's limited scope to be a hindrance. Nearly equally many (15) stated that the lack of understanding of the Charter's added value when compared to international instruments such as the European Convention on Human Rights is a reason for low levels of Charter use. Thus, NHRIs appear to see the Charter's characteristics as undermining its use. By contrast, CSOs see their lack of resources as a core reason for its underuse (55 %).¹⁵

4. Need for national and local policies promoting Charter rights

FRA's *Fundamental Rights Report* has over the past years concluded that Member States do not appear to be making sufficient efforts to promote awareness, or the implementation, of Charter provisions. According to FRA's consultation, CSOs are aware of hardly any government policies at national, regional or local level that promote the Charter's implementation (12 %). When asked to comment on existing policies, some respondents referred to the work of NHRIs.

Others stressed that there are no such policies; for example, as one put it: "Unfortunately, no attempt is made to inform people [about the Charter]".

"[Member States] shall respect the rights, observe the principles and promote the application thereof."

Article 51 of the EU Charter of Fundamental Rights (emphasis added)

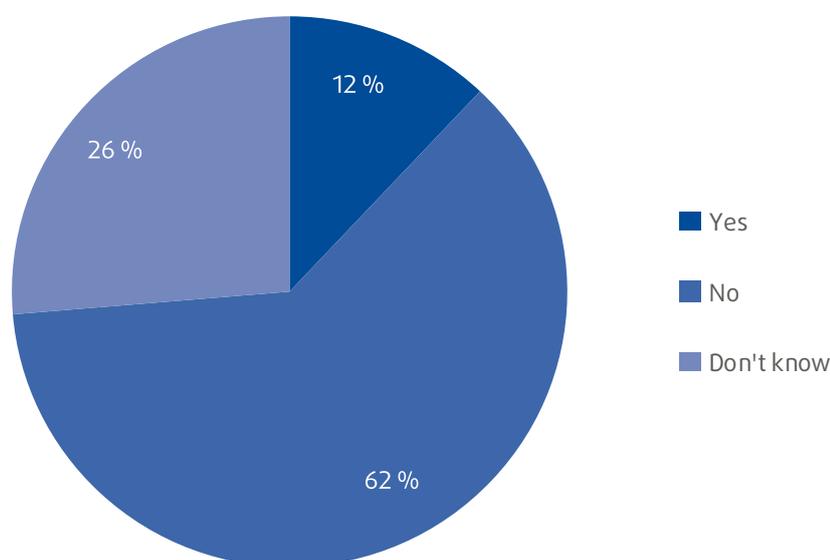
Examples of existing initiatives – the Netherlands

- The central government's framework for policy- and lawmakers includes a guide for the application of the Charter: https://www.kcwj.nl/sites/default/files/handleiding_nationale_toetsing_eu-handvest.pdf
- In the training programme for lawmakers, a course is dedicated to the Charter: <https://rechtenoverheid.nl/cursus/grondrechten-van-de-europese-unie-1070>. A course on the Charter is also available for employees of the Ministry of Justice.

¹⁵ Organisations could indicate more than one hindrance. Out of all respondents (n=153). Question A5: "What is the main hindrance/obstacle for your organisation to make more use of the Charter?"

- The central government's expertise center on European Law has a dedicated Charter page on their website: <https://ecer.minbuza.nl/ecer/eu-essentieel/handvest-grondrechten>
- The training and study center for the judiciary has a sophisticated online training module on the Charter, which assists judges in taking the Charter into account appropriately: <https://ssr.nl/cursus/irrmoghv/>
- The Court of Appeal of Amsterdam publishes a monthly newsletter on European case law. It includes CJEU case law and its interpretations of Charter rights: <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Amsterdam/Over-het-gerechtshof/Publicaties/Paginas/Nieuwsbrieven-Gerechtscoordinator-Europees-recht.aspx>

Figure 3: Awareness of government policies at national, regional or local level that promote the Charter's implementation (%)



Notes: Of all respondents (n=133). Question B11: "Are you aware of any government policies at national, regional or local level in your country which promote the implementation of the Charter?"
 Source: FRA, 2019

The dearth of national policies promoting application of the Charter's provisions raises the question of how the EU could do better and more to spark such national initiatives. In fact, four out of five respondents believe the EU could better assist Member States in implementing the Charter (76 %).

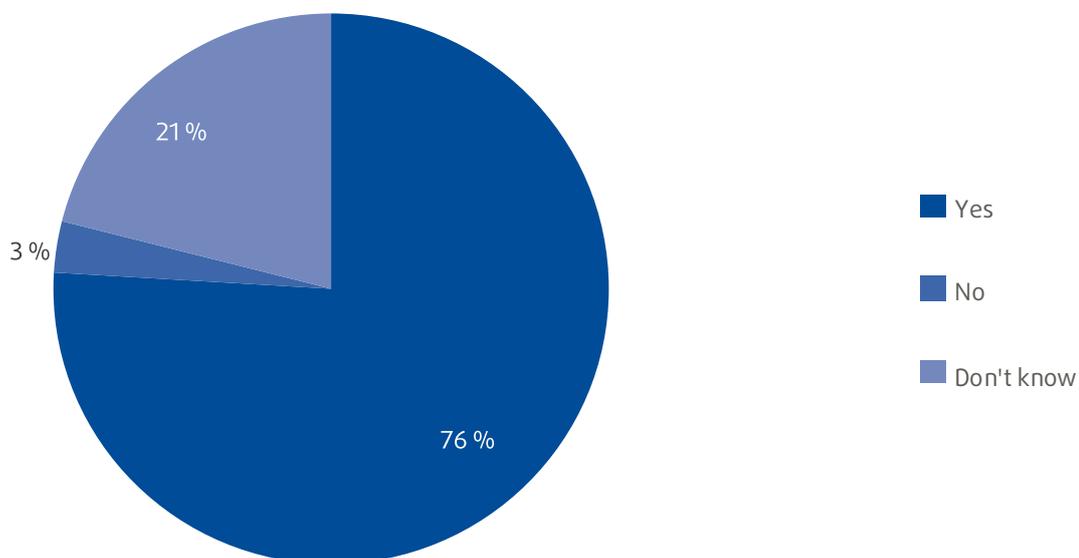
Many respondents provided proposals on how the EU could contribute to better implementation of the Charter at national level. These included calls for:

- **Funding:** Most of the proposals concern the provision of funding by the EU. Such funding should be targeted at training and networking. Respondents also mentioned capacity building for strategic litigation.

- **Stricter monitoring by the EU:** Some call on the EU to more vigorously monitor the Charter's implementation at national level.

- **Better outreach:** Increased awareness-raising efforts are often mentioned, including through EU representations at national level. Respondents also call on the EU to "reach out to independent civil society and youth networks to raise awareness of the Charter". Being closest to citizens, these actors are best placed to raise awareness of people's Charter rights and when they apply. Some proposals focus on developing guidelines, case books and networks for experts, while others call for "catchy visuals" aimed at the general public.

Figure 4: Potential for the EU to better assist Member States in implementing the Charter (%)



Notes: Of all respondents (n=133). Question B12: "Could the European Union (its institutions, agencies and policies) better assist the EU Member States in implementing the Charter in your country?"

Source: FRA, 2019

"The Council calls on the Member States to strengthen their awareness-raising and training activities regarding the Charter, including for policy makers, civil servants and legal practitioners, as well as national human rights institutions, civil society organisations and other human rights defenders."

Council Conclusions on the Charter of Fundamental Rights after 10 Years: State of Play and Future Work, adopted on 8 October 2019, para. 14

That so many civil society actors call on the EU to fund training is not surprising given that few CSOs have so far participated in Charter training sessions. According to the consultation, 80 % of the respondents said that their organisation so far neither organised Charter training nor took part in such training. This indicates that further training opportunities are needed. While a variety of Charter-related training material is available, it is only available in a very limited number of languages.¹⁶

¹⁶ The Ludwig Boltzmann Institute for Human Rights already made this point in "Screening of existing (training) materials on the Charter", p. 16. The language barrier is also mentioned as a "main challenge" in a 2018 publication produced as part of a project funded by the Justice Programme of the EU. See *Best Practices Handbook – Training and Experience Exchange on Fundamental Rights*, p. 24. Note that FRA's *Charterpedia*, an online tool that provides information on the Charter, is multilingual. The agency's Charter 'country sheets' are also available in all of the respective national languages.

Figure 5: Participation in, or organisation of, training on the Charter (%)



Notes: Of all respondents (n=153). Question A6: "Did your organisation take part in a training on the Charter or organise such a training?"
Source: FRA, 2019

5. Conclusions

The Council recently recognised civil society organisations' essential role at local, regional, national and EU levels "in promoting fundamental rights, including in raising awareness of fundamental rights among rights-holders and in supporting their efforts to exercise and defend their rights, within the framework of international, EU and national law".¹⁷ The Council also underlined "the necessity of safeguarding an enabling environment for independent national human rights institutions, equality bodies and other human rights mechanisms [as they] play a crucial role in the protection and promotion of fundamental rights and in ensuring compliance with the Charter".¹⁸

FRA's consultations with CSOs in its Fundamental Rights Platform and with NHRIs in the EU Member States on use of the Charter at national level confirms the overall impression that the Charter's potential is not yet fully used, and that awareness amongst NHRIs and civil society is low.

Civil society organisations active in the area of human rights stress the need for training on the Charter. Against this background, EU Member States should ensure that targeted training modules are offered – not only for national judges and other legal practitioners. At the same time, the Member States are reminded of their obligation under Article 51 to proactively promote the application of the Charter's provisions. They are expected to launch initiatives and policies aimed at promoting awareness and implementation of the Charter at national level, thereby bringing the Charter to 'national life'.

Of course, civil society actors and human rights institutions are also called upon to take ownership, use training opportunities and multiply Charter-knowledge internally. FRA can contribute to building the capacities of national human rights institutions, national training institutes, and possibly other relevant actors, to act as multipliers at the national level, particularly by reaching out to civil society organisations.

17 Council of the EU (2019), "Conclusions on the Charter of Fundamental Rights after 10 Years: State of Play and Future Work", Doc. 12357/19 as of 20 September 2019, adopted on 7 October, para. 23.

18 *Ibid.*, para. 22.

FRA resources on the Charter

The EU Agency for Fundamental Rights has developed a number of tools and resources for practitioners, law- and policymakers. These include:

- **Charterpedia**, an online information tool with article-by-article access to relevant European and national case law as well as relevant norms of constitutional, EU and international law. It complements information available on the e-Justice Portal on the Charter, its scope of application, interpretation and effects. Charterpedia is available on FRA's website and via the **Charter app**.
- A chapter of the annual **Fundamental Rights Report** dedicated to tracking the Charter's 'national life'. The 2020 report's focus section will take stock of Charter developments after ten years of being in force.
- Training material for a pilot series of training sessions offered to civil servants and civil society organisations in cooperation with national human rights institutions.
- A **Handbook on the Charter for legal practitioners and policy makers**, which focuses on the Charter's field of application (Article 51) and serves as a basis for training provided to national authorities.
- The **2018 Charter Opinion** on challenges and opportunities regarding the Charter's implementation. It is based on a questionnaire sent by the agency to all EU agencies to identify promising practices on how to promote the Charter in line with its Article 51.
- **Thematic handbooks**, two of which were updated in 2018. They are drafted and published in cooperation with the European Court of Human Rights and with documentary support from the Court of Justice of the European Union. They cover areas such as data protection law (2nd edition 2018), non-discrimination law (2nd edition 2018), access to justice (2016), rights of the child (2015), and asylum, border and migration (2014). Handbooks are translated into all EU languages.
- **Key principles for communicating Charter rights** effectively.
- 28 individual **Charter "country sheets"** that explain in simple language what the Charter means to the national legal systems (available in English and respective national languages).

For more information on FRA's work in the field, contact us at charter@fra.europa.eu.



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