



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in Germany

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 German 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 Germany?

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 Germany include:

The German Basic Law

The German Basic Law

- ★ It was promulgated on 23 May 1949; its most recent amendment in the field of fundamental rights took place in 2000.
- ★ It has 14 chapters and 146 articles. The first chapter enshrines a catalogue of fundamental rights (Articles 1 to 19), which is focused on civil liberties. Six other articles (Art. 20 (4), 33, 38, 101, 103 and 104) guarantee rights considered equivalent to fundamental rights.
- ★ The Constitutional Court derived socio-economic rights – for example, the right to a guarantee of the subsistence minimum – from human dignity (Article 1 (1)), in conjunction with the principle of the social welfare state (Article 20 (1)).

The Basic Law, the EU Charter and the ECHR

- ★ The Basic Law mentions the **European Convention on Human Rights (ECHR)** in relation to the right to asylum (Article 16a). Although there is no reference to the Charter, Article 23 of the German Basic Law (*Grundgesetz*) lays down that the Federal Republic of Germany “shall participate in the development of the European Union [...] that guarantees a level of protection of basic rights essentially comparable to that afforded by this Basic Law”.
- ★ The Charter provides for some rights that are neither explicitly contained in Council of Europe human rights instruments (such as ECHR) nor in the German Basic Law.

★ National courts: principle of non-discrimination (Article 21) and integration of persons with disabilities (Article 26)

In a 2014 case (**Case B 11 AL 5/14 R**) on equality rights, the Federal Social Court emphasised that such rights need to be guaranteed to all persons with disabilities, both those who are unemployed and those who wish to make a career change. The court stressed that it is not enough to allow persons with disabilities to carry out any kind of activity that civil servants regularly exercise. To meet the requirements of Article 21 and Article 26 of the Charter, the legislator and employer are required to enable persons with disabilities to change fields of work.

★ National courts: freedom to conduct a business (Article 16)

On 22 June 2017, the Higher Administrative Court of North Rhine-Westphalia issued a preliminary measure concerning **a case** regarding whether certain provisions of the Telecommunication Act requiring the business to store its customers’ metadata – implementing the e-Privacy Directive (2002/58/EC) – are compatible with various Charter provisions. The court found that the specific obligation to store metadata imposed a limitation on the freedom to conduct a business, as protected by Article 16 of the Charter, and was unjustified and hence incompatible with the Charter.

★ National legislation: general reference to the Charter

Paragraph 28 (2) No. 4 of the Federal Criminal Police Office Law, which came into force on 25 May 2018, refers to the Charter. It states that the transmission of data to EU Member States and non-EU countries is precluded where this would amount to a violation of the principles contained in the Charter.

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



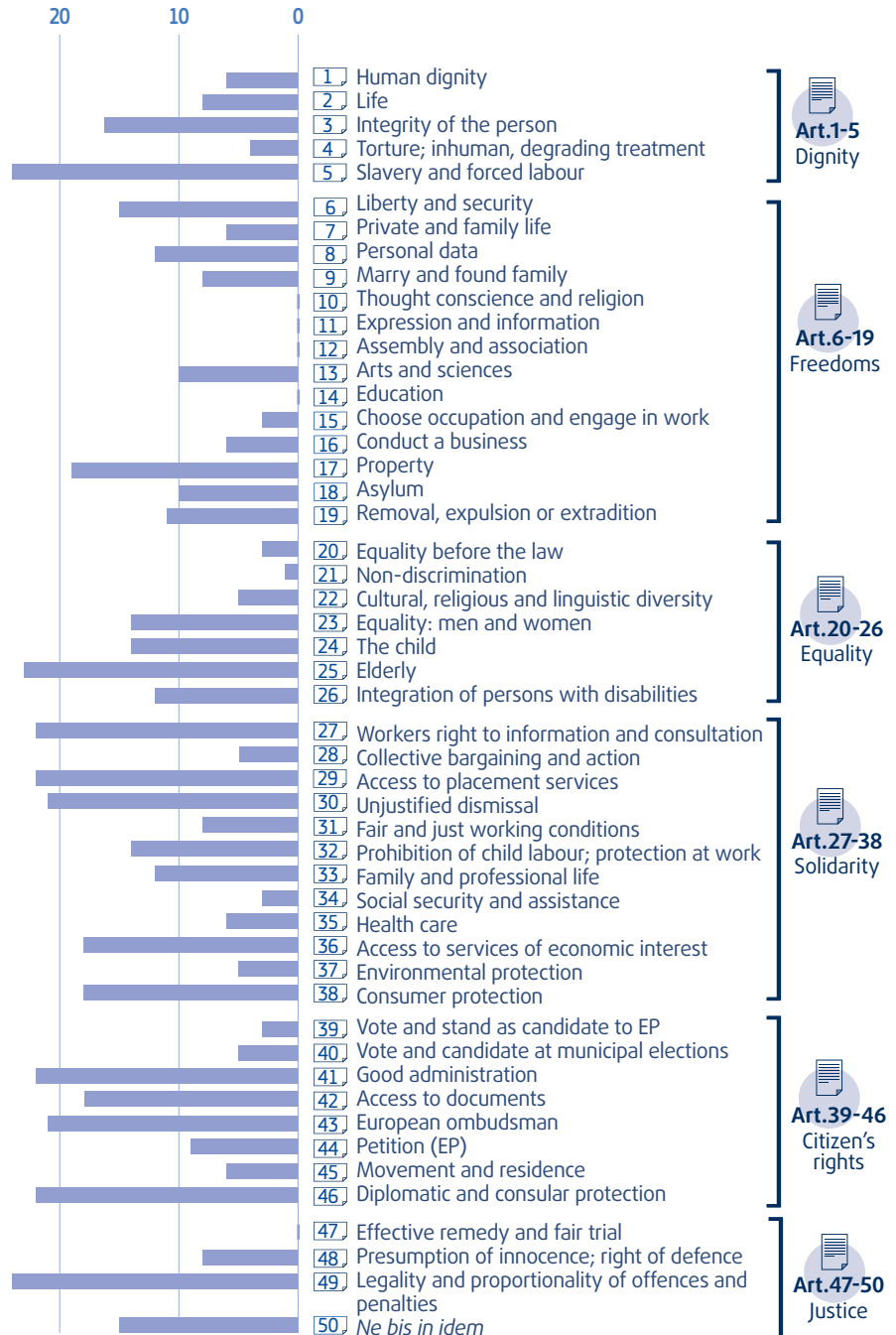
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Germany, many Charter rights appear not to be fully mirrored in national constitutional law – for instance, the protection of personal data (Article 8), cultural, religious and linguistic diversity (Article 22), rights of the elderly (Article 25), workers’ right to information and consultation within the undertaking (Article 27), right of access to placement services (Article 29), protection in the event of unjustified dismissal (Article 30), fair and just working conditions

(Article 31), prohibition of child labour and protection of young people at work (Article 32), social security and social assistance (Article 34), health care (Article 35), consumer protection (Article 38), 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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