



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in Sweden

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 Swedish 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 Sweden?

The Swedish constitution

The Constitution of Sweden

- ★ It consists of four fundamental laws: the Instrument of Government, the Act of Succession, The Freedom of the Press Act, and the Fundamental Law on Freedom of Expression. Together they make up the Constitution of Sweden.
- ★ Sweden does not have a central bill of rights. A number of fundamental rights are enshrined in the second chapter of the Instrument of Government, namely in its Articles 1 to 18.
- ★ Sweden has not regulated any social-economic rights in the fundamental laws, except the right to education. However, such rights are mentioned in the introductory *Statements of goals and objectives* in Chapter 1, Section 2 of the *Instrument of Government*. The right of access to documents is regulated in Chapter 2 of the Freedom of the Press Act.

The constitution, the EU Charter and the ECHR

- ★ The four fundamental laws do not refer to the EU Charter.
- ★ EU primary law is not explicitly mentioned, but Chapter 11, Section 14, and Chapter 12, Section 10, of the Instrument of Government specify that, if a rule of fundamental law or “other superior statute” is in conflict with a provision, that provision shall not be applied.
- ★ Chapter 2, Section 19, of the same law states that no act of law or other provision can be adopted that contravenes Sweden’s undertakings under the **European Convention on Human Rights**.

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 Sweden include:

★ Rights of the child (Article 24)

In December 2016, the Court of Appeal dealt with a case (Case B 7426-15) concerning a man who had helped a family to cross the border illegally. Normally, a person who is paid for assisting a foreigner’s entry into Sweden is sentenced to three to four months in prison. However, in this case, in light of Article 24 (the rights of the child), the court decided to change the prison time to a suspended sentence and community service because the person concerned was motivated by the desire to help children.

★ Respect for private and family life (Article 7), protection of personal data (Article 8), freedom of expression and information (Article 11)

In 2017, the Svea Court of Appeal (Case T 4721-16) followed the ruling of the Stockholm District Court and its assessment of personal data processing. The case concerned the right to personal integrity on the one hand and freedom of information and expression on the other. The plaintiff requested that seven links appearing in the Google Search engine index be removed, while Google Inc. maintained that they were of interest to the general public. In its ruling, the Stockholm District Court referred to Articles 7, 8, 11 and 16 of the EU Charter, elaborating on the possible conflicts between the provisions.

★ Right not to be tried or punished twice in criminal proceedings for the same criminal offence (Article 50)

In 2015, the Supreme Administrative Court (1161-14) had to decide whether the Swedish legislation on revocation of a licence to possess firearms was contrary to the prohibition not to be punished twice for the same crime, since it was based on a criminal sentence. The court examined the allegation, referring among others to Article 50 of the EU Charter; it concluded that the revocation did not constitute a criminal sentence, but an administrative measure.

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.

When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the

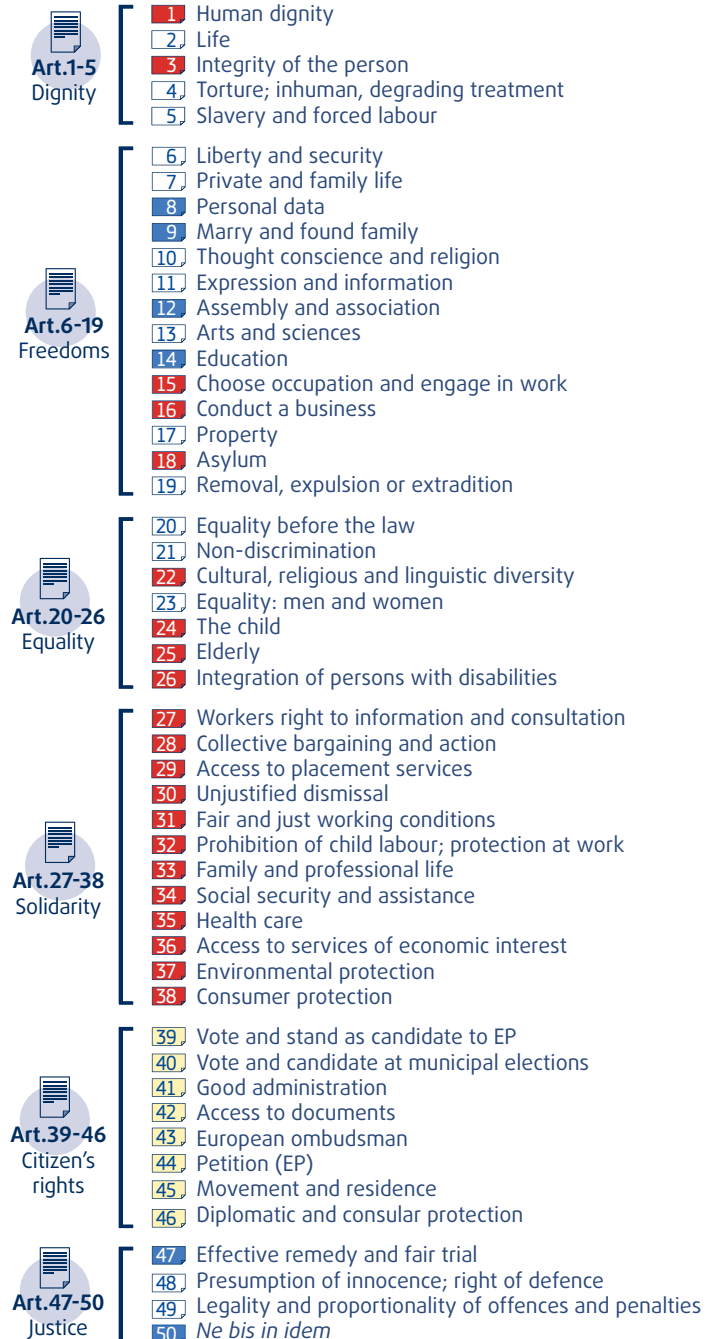
- No ECHR equivalent
- More extensive than ECHR
- Equivalent protection to ECHR
- EU context-specific

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



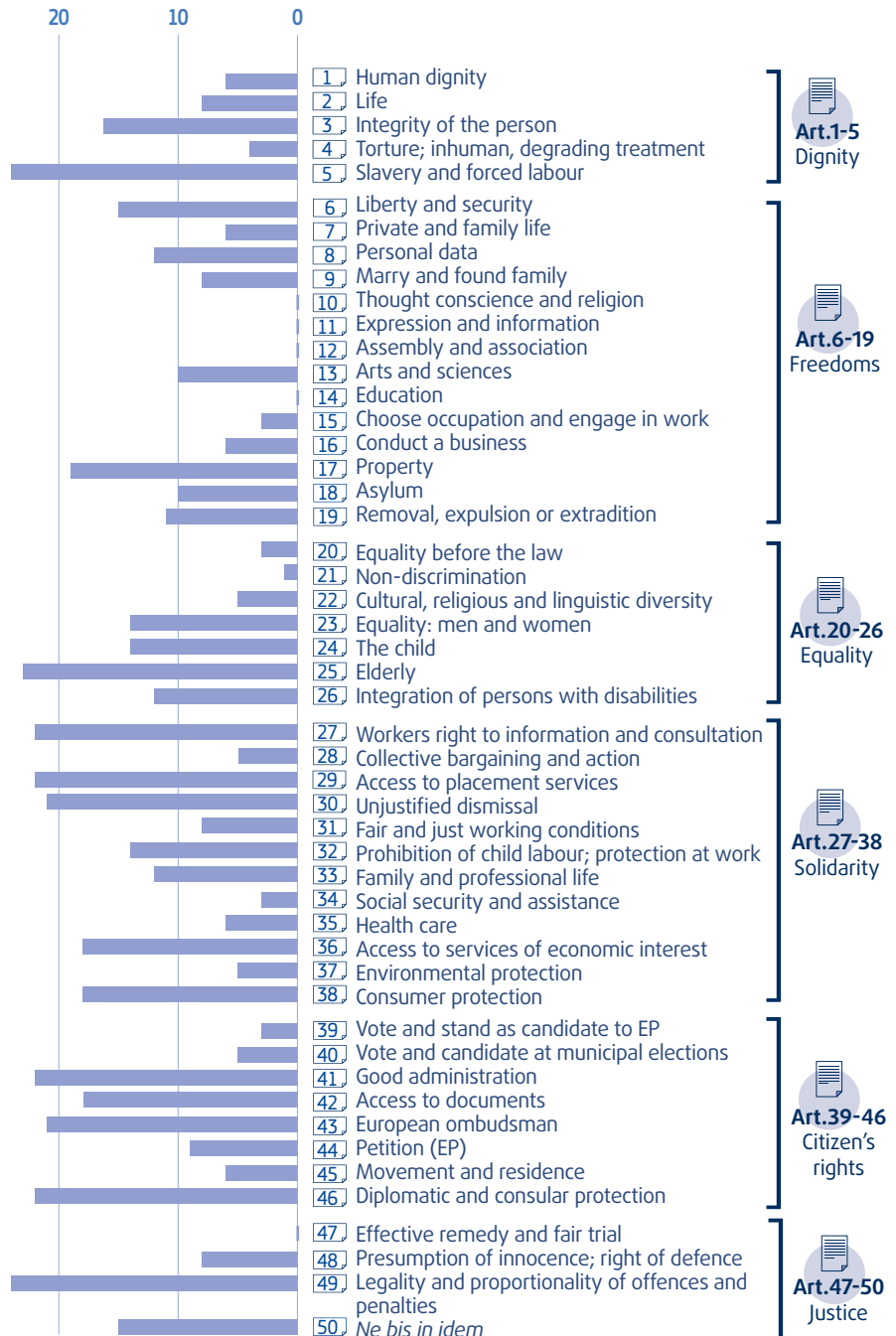
Charter is often more explicit about certain rights. For example, in Sweden, many Charter rights appear not to be fully mirrored in national constitutional law – for instance, the prohibition of slavery and forced labour (Article 5), right to marry and right to found a family (Article 9), freedom of the arts and sciences (Article 13), freedom to choose an occupation and right to engage in work (Article 15), freedom to conduct a business (Article 16), protection in the event of removal, expulsion or extradition (Article 19), integration of persons with disabilities (Article 26), 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), family and professional life (Article 33), access to services of general economic interest (Article 36), consumer protection (Article 38), right to good administration (Article 41), presumption of innocence and right to defence (Article 48) 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

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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