



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in Belgium

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 Belgian 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 Belgium?

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 Belgium include:

★ National legislation: general reference to the Charter

In a 2016 document (**Circulaire n°5623**) related to a reception programme for immigrants, the French Community in Belgium refers to the requirement that the fund for asylum, migration and integration must respect the rights and principles enshrined in the EU Charter.

★ Parliamentary debate: general reference to the Charter

In 2017, a Member of Parliament asked about the possibility of the Turkish population in Belgium participating on Belgian territory in a Turkish referendum on the death penalty. The Prime Minister **replied** that this would not be tolerated, citing the EU Charter as one of the sources from which the prohibition of capital punishment stems.

★ Parliamentary debate: freedom of thought, conscience and religion (Article 10)

The Council of State in 2017 stressed the need to find the right balance between animal rights and freedom of religion in the context of the implementation of Council Regulation 1099/2009 on the protection of animals at the time of killing and prohibiting ritual slaughter without stunning. The Council of State concluded in its impact assessment that the legislative proposal should be revised to include necessary adjustments, ensuring respect for freedom of religion as laid down in, among others, Article 10 (freedom of thought, conscience and religion) of the EU Charter. The Walloon Parliament took this assessment into consideration by adding that it must be possible to purchase meat coming from a Member State that authorises ritual slaughter without prior stunning (**avis 60.870/4 and 60.871/4**).

The Belgian constitution

The Belgian Constitution

- ★ It was adopted on 7 February 1831.
- ★ It has nine titles and 198 articles. A catalogue of fundamental rights is included in Title II (Articles 8-32).
- ★ The constitution contains safeguards for all categories of fundamental rights without any hierarchy, including civil, political and cultural, as well as social and economic rights – such as the right to education (Article 24 (1)) and the right to property (Article 16).

The constitution, the EU Charter and the ECHR

- ★ The only reference to EU primary law is made in the context of voting rights (Articles 8, 39ter and 168bis).
- ★ Neither the EU Charter nor the **European Convention of Human Rights** are explicitly referred to in the constitution.

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.

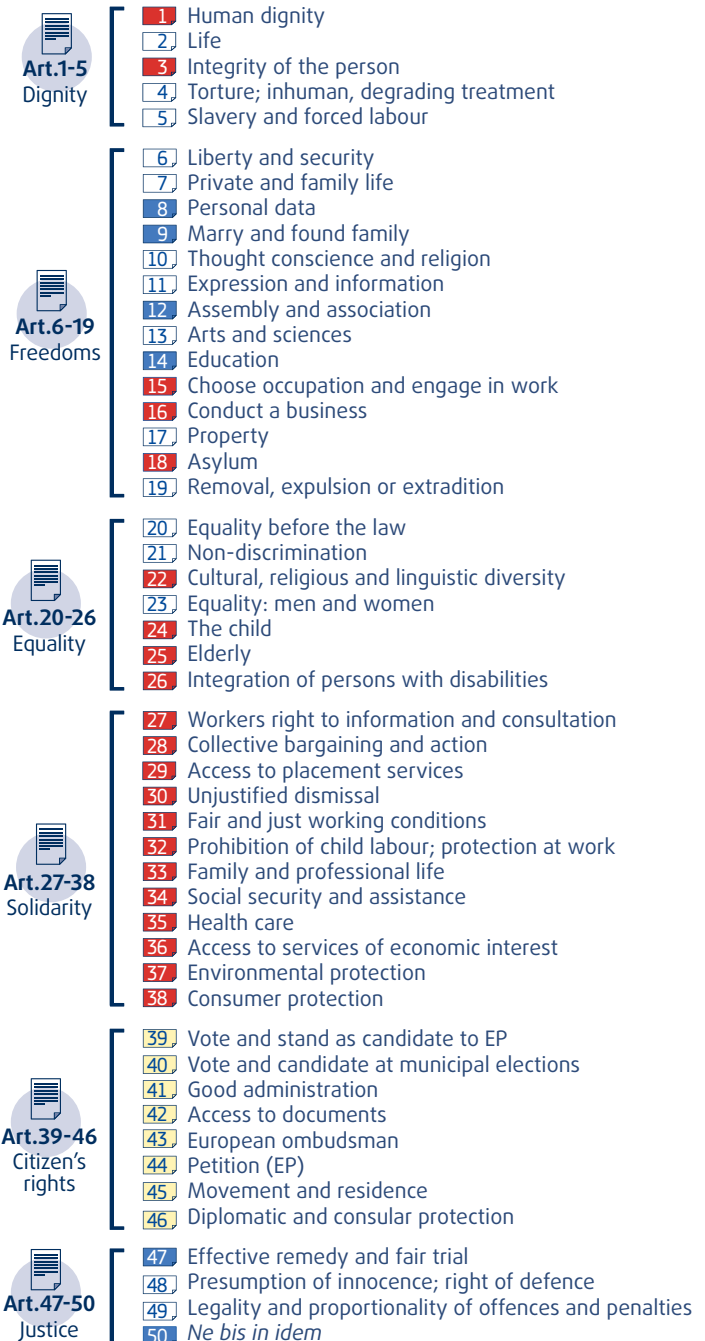
- No ECHR equivalent
- More extensive than ECHR
- Equivalent protection to ECHR
- EU context-specific

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



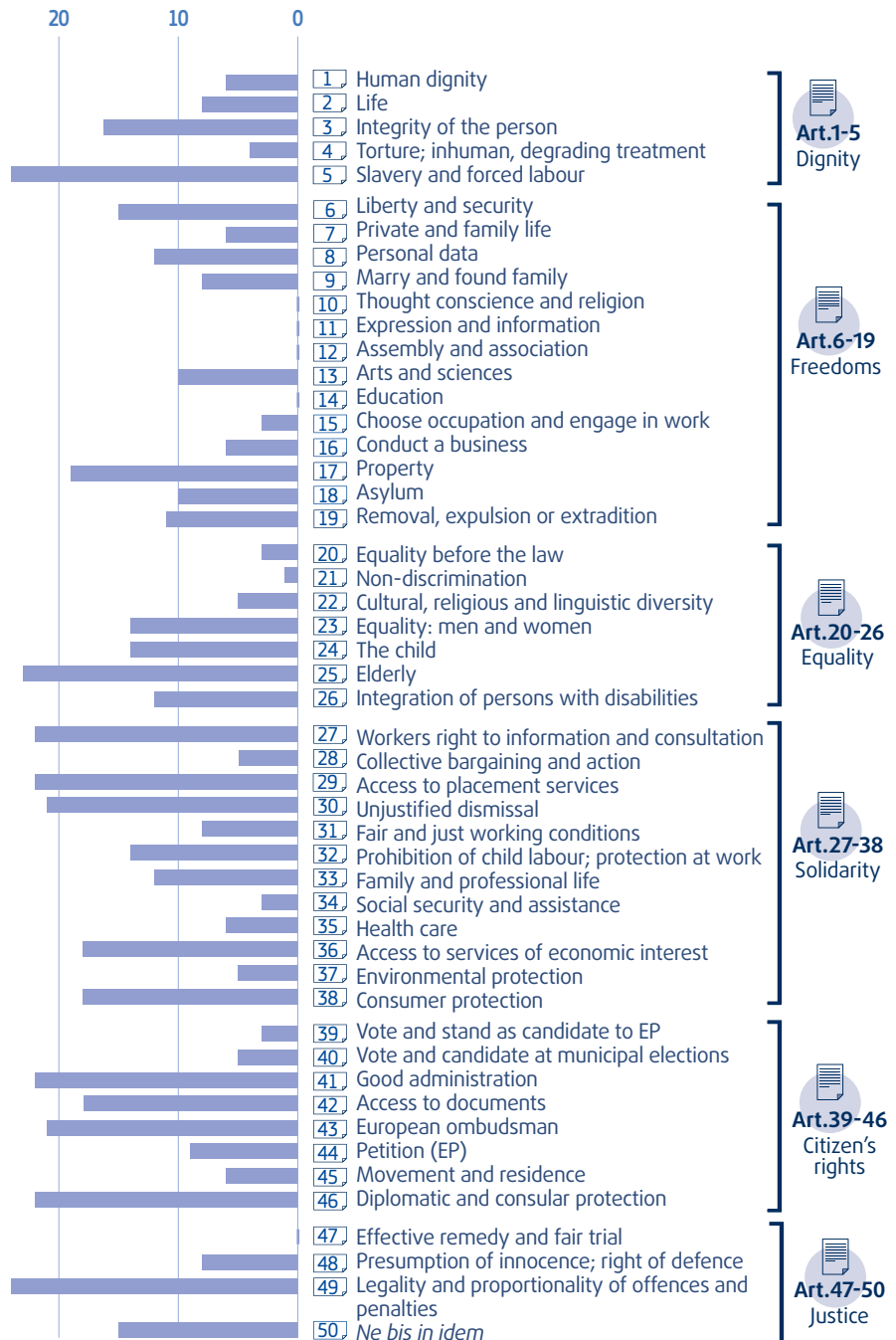
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Belgium, several Charter rights appear not to be fully mirrored in national constitutional law – for instance, the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), prohibition of slavery and forced labour (Article 5), protection of personal data (Article 8), freedom of the arts and sciences (Article 13), freedom to conduct a business (Article 16), right to asylum (Article 18), protection in the event of removal, expulsion or extradition (Article 19), integration of persons with disabilities (Article 26), 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), access to services of general economic interest (Article 36), consumer protection (Article 38), right to good administration (Article 41), freedom of movement and of residence (Article 45), 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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