



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in Cyprus

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 Cypriot 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 Cyprus?

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 Cyprus include:

★ National courts: the scope of the EU Charter

In 2015, the Supreme Court of Cyprus dealt with the applicability of the Charter (**Case 36/2015**) in the context of reviewing the national data retention law transposing the Data Retention Directive (which was invalidated by the CJEU's judgment in *Digital Rights Ireland*). The court concluded that, although the national data retention law states in its preamble that it purports to transpose the Data Retention Directive, the law's ambit is wider than that of the directive because it seeks to regulate access to data in addition to the duty to retain data. Therefore, the Charter was not to be applied.

★ National courts: right to an effective remedy and to a fair trial (Article 47)

In another case (**Case 95/2015**) in 2015 – concerning an extension of a European Arrest Warrant – the applicant challenged the district court's decision to hand him over to the Greek authorities without giving him the opportunity to be heard. The Supreme Court found a violation of the right to a fair trial as laid down in Article 30.3 of the Constitution, Article 6.1 of the ECHR and Article 47 of the EU Charter.

★ Legislative process: respect for private and family life (Article 7) as well as data protection (Article 8)

In 2018, the Charter was referred to in a Parliamentary Legal Committee report on the "Law on the protection of natural persons towards processing of personal data and free circulation of such data". The President of the Republic had returned the law to the House of Representatives for reconsideration. Certain provisions were found to be incompatible with the Charter and therefore removed from the draft.

The Cypriot constitution

The Constitution of the Republic of Cyprus

- ★ It was appended to the 1959 London-Zurich Treaties that granted Cyprus its independence.
- ★ It was most recently revised in 2016 by the **Law on the Fifteenth amendment of the Constitution No. 93(I) of 2016**. As a result, there is no reference to the death penalty anymore – which was already abolished in 1999, when Cyprus ratified Protocols 6 and 13 of the ECHR (Ratification Laws 11(III)/1999 and 1(III)/2003).
- ★ Out of its 200 provisions, 30 deal with fundamental rights, modeled on Section I of the ECHR. This part II of the Constitution also provides for some socio-economic rights, such as a right to decent existence, protection of workers and the right to strike.
- ★ The rest of the provisions deal primarily with the division of power between the island's Greek and Turkish communities, defunct since 1964, when the Turkish Cypriots withdrew from the administration of the state.

The constitution, the EU Charter and the ECHR

- ★ In 2016, a reference to the Charter and to the **European Convention on Human Rights** was added to the preamble of the constitution, mentioning the abolition of the death penalty and the introduction of an additional exception to the right to privacy, referencing **Article 8 (2) ECHR**.

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.

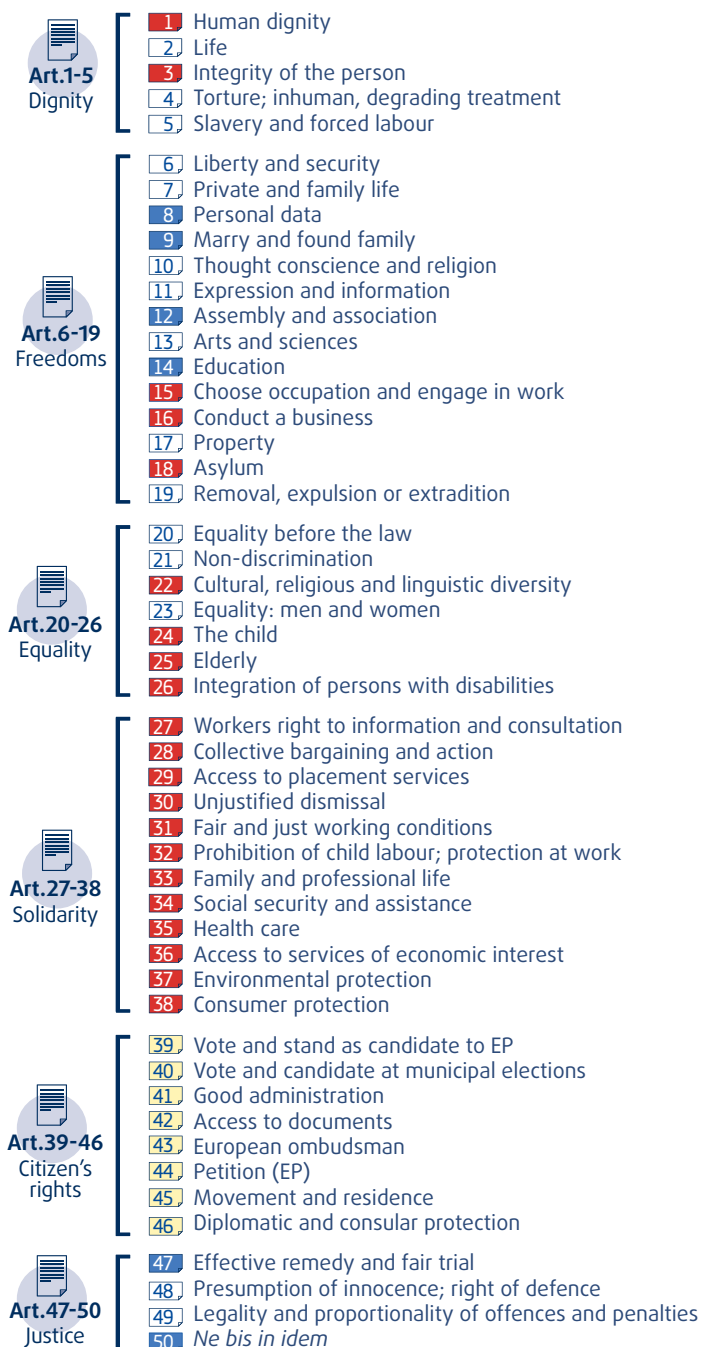
- No ECHR equivalent
- More extensive than ECHR
- Equivalent protection to ECHR
- EU context-specific

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



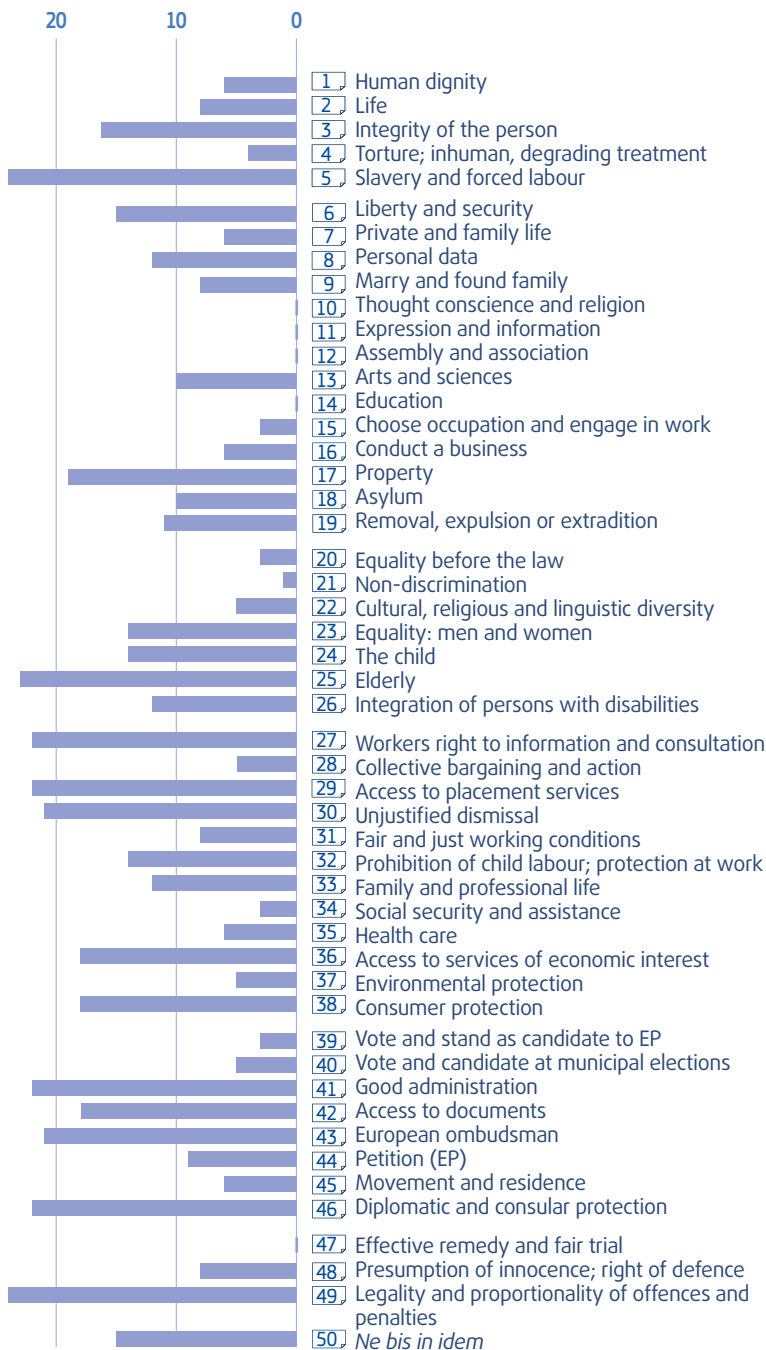
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Cyprus, some of the Charter rights appear not to be fully mirrored in national constitutional law –for instance, dignity (Article 1), freedom of the arts and sciences (Article 13), right to asylum (Article 18), rights of the child (Article 24), rights of the elderly (Article 25), 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), health care (Article 35), environmental protection (Article 37), consumer protection (Article 38), 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

Art.1-5
Dignity

Art.6-19
Freedoms

Art.20-26
Equality

Art.27-38
Solidarity

Art.39-46
Citizen's rights

Art.47-50
Justice

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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