



# THE EU CHARTER OF FUNDAMENTAL RIGHTS

## in Czechia

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 Czech 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 Czechia?

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 Czechia include:

### ★ Right to consumer protection (Article 38)

In a case (**Case III. US 3725/13**) from 2014, the Constitutional Court interpreted the right to consumer protection of the Charter and concluded – by also referring to the horizontal consumer protection clause in Article 12 of the TEU and the policy provision in Article 169 of the TFEU – that this Charter provision does not grant an individual right and is not directly enforceable:

*“Consumer protection cannot be deemed to be one of the fundamental rights and freedoms guaranteed under the constitution [...]; constitutions usually speak not of a subjective right but rather of a constitutionally set goal of State policy [...] Article 38/2 [of the Charter] is also not a subjective right enforceable directly by a legal action, but is a principle that EU institutions and Member States reflect when transposing EU legislation, whereas it is possible to claim the principle of consumer protection before the courts only for the purpose of interpretation and to check the legality of these acts, as set out in Article 52, Section 2 of the EU Fundamental Rights Charter and explanatory reports to the Charter.”*

Czech Republic, Constitutional Court (*Ústavní soud*), **Case III. US 3725/13**, 10 April 2014.

### ★ Right to vote and to stand as a candidate in European Parliament elections (Article 39)

A case (**CZ:US:2015:Pl. US.14.14.1**) handled by the Czech Constitutional Court in 2015 involved a challenge to a national law on European Parliament elections, which set a 5 % electoral threshold. The plaintiffs included a political party that did not succeed because of this threshold. The Constitutional Court rejected the challenge; it pointed out that 14 of the 28 EU Member States have an electoral threshold and concluded that the right to vote and to stand as a candidate in European Parliament elections (Article 39 of the Charter) did not foreclose the use of such thresholds.

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

In 2016, the Charter was instrumental in a case before the Constitutional Court (**Case II. ÚS 143/16**) concerning a German national arrested and prosecuted for being a member of a criminal group that trafficked drugs from the Czech Republic to Germany. However, she had already been prosecuted and sentenced for some of these acts in Germany. The Constitutional Court deemed her constitutional complaint justified and found a breach of the legal principle *ne bis in idem* (no legal action can be taken twice for the same offence). The court stressed the extended transnational protection of the *ne bis in idem* principle as laid down in the Charter, compared with the scope of the corresponding national constitutional provision limited to the national state. Consequently, the decisions of the authorities involved in the criminal proceedings were annulled.

## The Czech constitution

### The Constitution of the Czech Republic

- ★ It was adopted in December 1992. The constitution consists of eight chapters and has 113 articles. It does not contain a list of fundamental rights, but has relevant provisions – such as on the role of the judiciary to protect fundamental rights and freedoms.
- ★ Fundamental rights and freedoms are listed in the Charter of Fundamental Rights and Freedoms, a central bill of rights that has constitutional status. The document was adopted in February 1991 by the Federal Assembly of Czechoslovakia as a constitutional law; right before the dissolution of Czechoslovakia in December 1992, it was re-adopted by the Presidium of the Czech National Council.
- ★ The Charter of Fundamental Rights and Freedoms consists of six chapters and has 44 provisions, including some economic, social, and cultural rights. The Constitution of the Czech Republic lists it among the parts of the national constitutional order.

### The constitution, the EU Charter and the ECHR

- ★ According to Article 10, all ratified international treaties are part of Czech law and binding on the Czech Republic. In case of inconsistency or conflict between an international treaty and Czech law, the treaty is superior and prevails.
- ★ There is, however, no provision referring explicitly to the EU Charter, EU primary law, or the **European Convention on Human Rights** in Czech constitutional law.

# 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.

- 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



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.

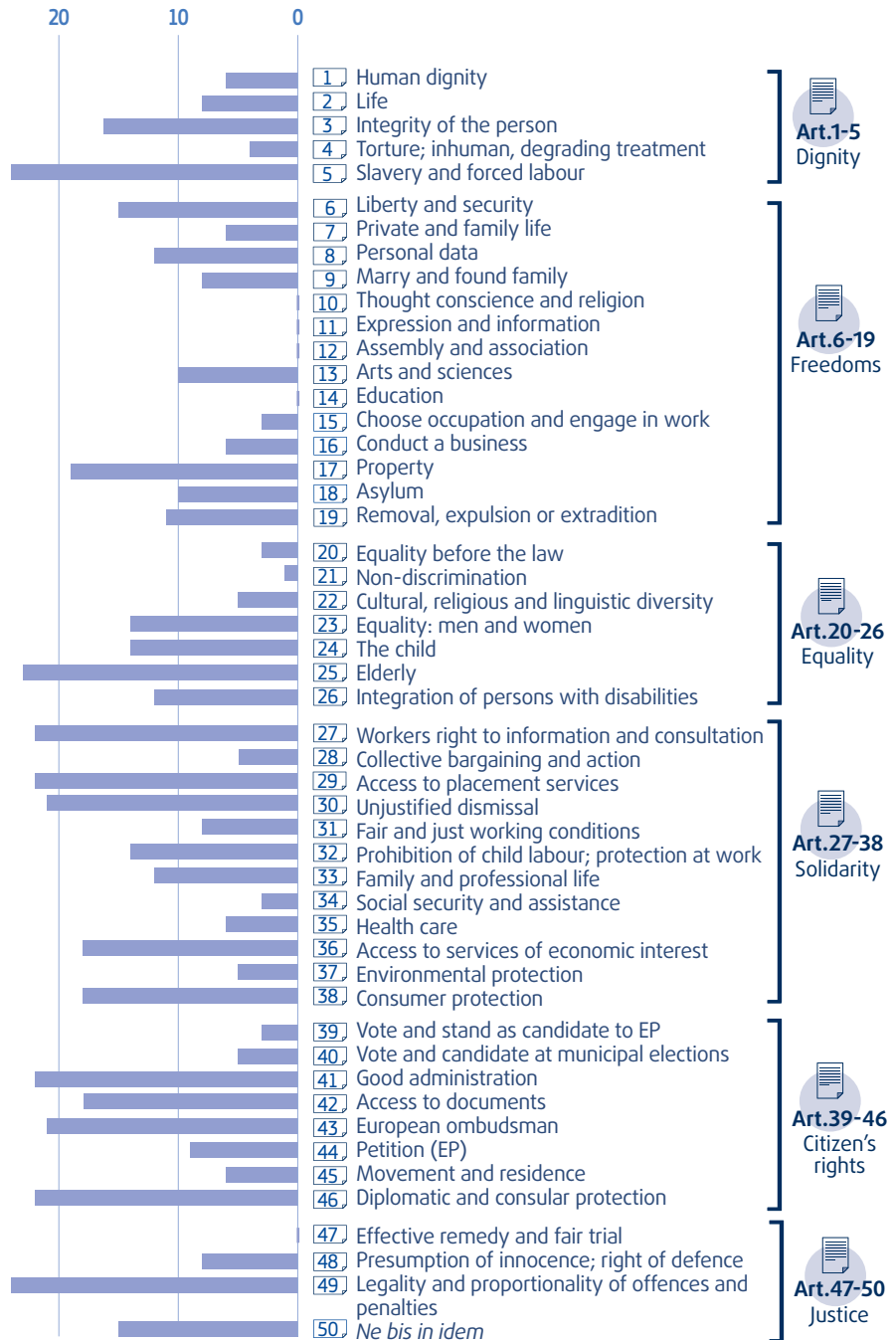
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Czechia, some Charter rights appear not to be fully mirrored in national constitutional law – for instance,

the right to marry (Article 9), workers’ right to information and consultation within the undertaking (Article 27), right of access to placement services (Article 29), 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

# 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**.

## FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Tel: +43 158030-0 – Fax: +43 158030-699

[fra.europa.eu](http://fra.europa.eu) – [info@fra.europa.eu](mailto:info@fra.europa.eu)

 [facebook.com/fundamentalrights](https://facebook.com/fundamentalrights)

 [twitter.com/EURightsAgency](https://twitter.com/EURightsAgency)

 [linkedin.com/company/eu-fundamental-rights-agency](https://linkedin.com/company/eu-fundamental-rights-agency)

© FRA, 2019  
ISBN 978-92-9474-159-2  
DOI:10.2811/33983  
TK-03-18-085-EN-N



Publications Office