



# THE EU CHARTER OF FUNDAMENTAL RIGHTS

## in Malta

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 Maltese 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 Malta?

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 Malta include:

### ★ National legislation: general reference to the Charter

In its reasoning, a 2014 act (**Bill 18 of 2013, Constitution of Malta (Amendment) Act**) to amend the constitution referred to the Charter, stating that the amendment “brings the protection from discrimination contained in the constitution in line with the protection contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union, and makes such protection justiciable, thereby empowering victims to seek redress”.

### ★ National courts: right to the integrity of the person (Article 3)

In a 2015 civil court decision (No. 33/2014), the court explicitly excluded the Charter’s applicability, but mentioned that lower courts used Article 3 of the Charter – the right to the integrity of the person, which does not have a corresponding provision in the Maltese constitution – to endorse the possibility of claiming moral damages. The court held that it would be desirable and more practical to incorporate remedies for moral damages into ordinary law so that lower courts could use national norms to award appropriate compensation.

### ★ National case law: the scope of the EU Charter

In 2017, a case (**Case 52/2016/LSO**) brought before a civil court concerned the requirement for women, but not men, to include their marital status when, for instance, registering a contract of sale with the Public Registry. Although the administrative court found that the requirement violated the constitution and the European Convention on Human Rights, it stressed that the issue at stake did not fall within the scope of EU law.

## The Maltese constitution

### The Constitution of Malta

- ★ It was adopted in 1964.
- ★ It contains ten chapters and 124 articles.
- ★ It guarantees the protection of fundamental civil and political rights in Chapter IV, entitled Fundamental Rights and Freedoms of the Individual, in Articles 32-45. Recent amendments to Article 32 and 45 added sexual orientation and gender identity to the non-discrimination clauses. The rights in Chapter IV are justiciable before national courts. Chapter II, entitled Declaration of Principles, provides for the protection of social, economic and cultural rights in Articles 7-21. Although these are not enforceable in court, they are defined as “fundamental to the governance of the country”.

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

- ★ The EU Charter of Fundamental Rights, just as the **European Convention on Human Rights**, is not explicitly referred to in the constitution.
- ★ There is, however, a reference to the obligations assumed by Malta through the treaty of accession to the European Union, in Article 65.

# 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

- 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



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.

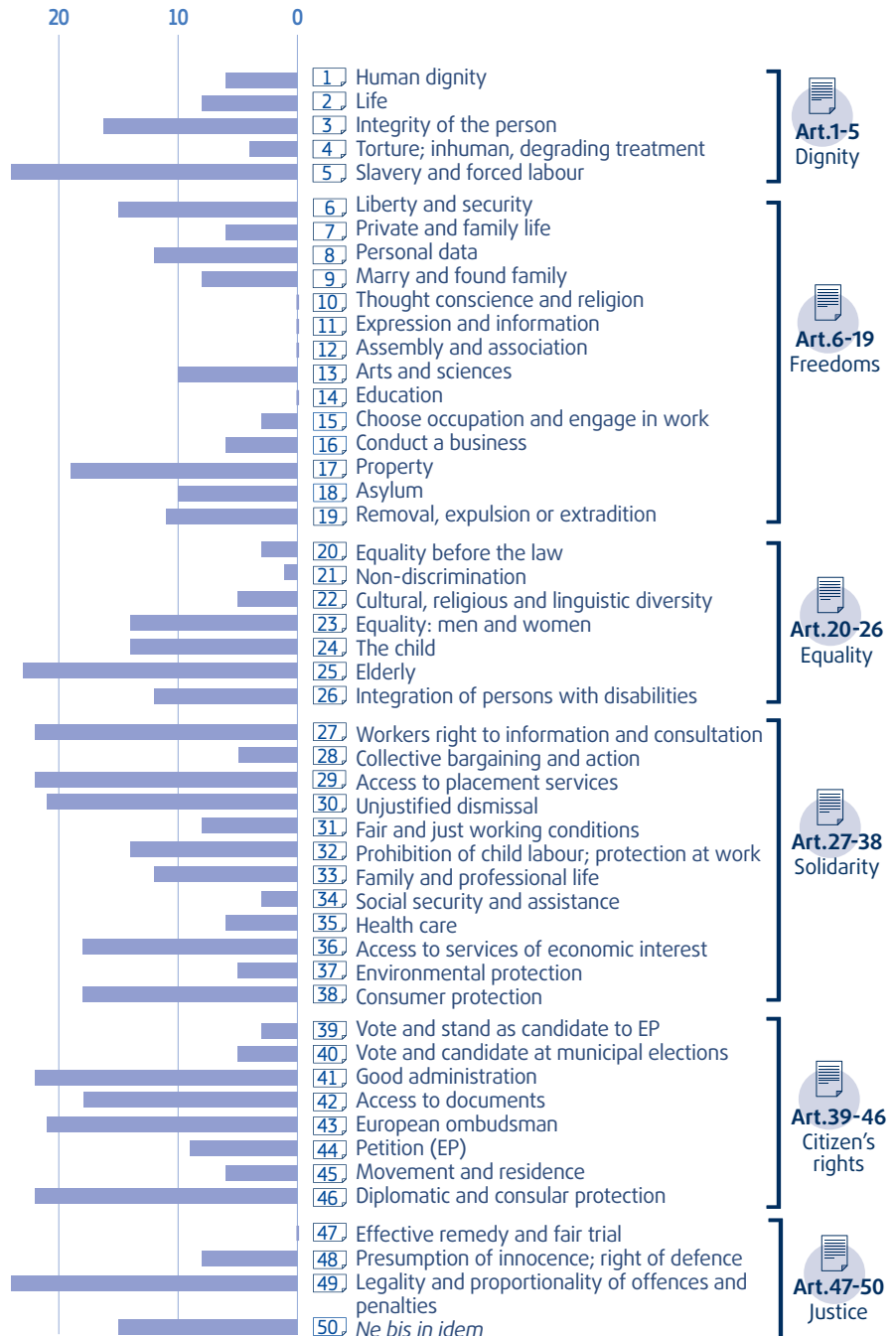
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Malta, various Charter rights appear not to be fully mirrored in national constitutional law – for instance, human dignity (Article 1), right to the integrity of the person (Article 3), rights of the child (Article 24),

health care (Article 25), access to services of general economic interest (Article 36), environmental protection (Article 37), consumer protection (Article 38), right to good administration (Article 41) and the right to access to 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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