



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in Austria

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 Austrian 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 Austria?

Austrian constitutional law

The Federal Constitution

- ★ It was adopted in 1929. For historical reasons, the Federal Constitution is not enshrined in a single document. Similarly, there is no single catalogue of fundamental rights, but a variety of statutory sources.
- ★ The **1867 Basic Law on the General Rights of Nationals** was most recently revised in 1988. It forms the historical core of the national catalogue of fundamental rights and contains 22 articles, 19 of which cover fundamental rights.
- ★ The **Federal Constitutional Law** was adopted in 1920. It contains the principle of equality and of non-discrimination (Article 7), the right to vote and the right to be elected (Articles 23a, 26, 60, 95 and 117), various fair trial guarantees (including the right to one's lawful judge in Article 83 para. 2), and the abolition of the death penalty (Article 85).
- ★ The Federal Constitution does not explicitly guarantee socio-economic rights. However, the Constitutional Court has interpreted in particular the equality principle as containing specific rights granting entitlements to public benefits comparable to social rights.

The constitution, the EU Charter and the ECHR

- ★ The EU Charter is not mentioned in the text of the Federal Constitution. The **European Convention on Human Rights** enjoys constitutional rank since 1964 and constitutes the heart of Austrian fundamental rights protection.
- ★ In 2012, the **Constitutional Court clarified** that the rights guaranteed by the EU Charter equal constitutional rights before the Constitutional Court if they are in accordance with the constitutionally guaranteed rights, both in wording and determination. The rights guaranteed in the Charter can thereby not only be invoked as constitutional rights in individual complaints to the Constitutional Court, but also form a benchmark in its proceedings on examining the general compatibility of legislation with constitutional law.

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 Austria include:

★ **Respect for private and family life (Article 7) and protection of personal data (Article 8)**

In 2014, the Austrian Constitutional Court (e.g. **Case G47/2012**) pointed out that the supremacy of EU law can provide for efficient and directly applicable rights for individuals. When examining the constitutionality of the national data retention laws implementing the Data Retention Directive (2006/24/EC), the court stressed once more that, within the scope of EU law, the EU Charter rights form benchmarks when checking the legality of national norms.

★ **Effect of the Charter in the national system**

In a case relating to an asylum application, the Constitutional Court in Austria referred to the EU Charter and stated:
“Fundamentally, a contradiction between a general Austrian provision and Union law (only) leads to the non-applicability of the Austrian provision, which is to be acknowledged incidentally by all state organs [...], but not to its repeal (VfSlg 15:189/1998). In principle, the Constitutional Court has no competence to examine general Austrian legal provisions in light of European Union law, unless there is a violation of a right which is guaranteed by the Charter and which is similar in formulation and assertiveness to constitutionally guaranteed rights of the Austrian constitution.”

Austria, Constitutional Court, **Case G447/2015**, 9 March 2016, para. 3.2.5.

★ **Charter's limited field of application**

In 2014, the Austrian Constitutional Court dealt with a case (**Case B166/2013**) concerning a homosexual couple from the Netherlands who wanted to redo their vows in Tyrol, but were not allowed to do so. The couple's claim, based on the non-discrimination clause (Article 21) of the Charter, was rejected based on the argument that the national non-discrimination provision in question did not have to be in compliance with Article 21 of the Charter, as it did not aim to implement any Union law. Moreover, the national provisions were outside the scope of application of the EU equality directives, so that “there is no provision of Union law which is specific to this area or might influence it”. Therefore, the Constitutional Court continued, the Union rules in the present case did not formulate obligations of the Member States and the fundamental rights of the EU Charter were not applicable regarding the national rules that determined the case.

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.

**Figure 1: What rights are covered?
Comparing the Charter and the ECHR**

Charter articles and text of the ECHR: differences and equivalence in coverage


Art.1-5
Dignity

- 1 Human dignity
- 2 Life
- 3 Integrity of the person
- 4 Torture; inhuman, degrading treatment
- 5 Slavery and forced labour


Art.6-19
Freedom

- 6 Liberty and security
- 7 Private and family life
- 8 Personal data
- 9 Marry and found family
- 10 Thought conscience and religion
- 11 Expression and information
- 12 Assembly and association
- 13 Arts and sciences
- 14 Education
- 15 Choose occupation and engage in work
- 16 Conduct a business
- 17 Property
- 18 Asylum
- 19 Removal, expulsion or extradition


Art.20-26
Equality

- 20 Equality before the law
- 21 Non-discrimination
- 22 Cultural, religious and linguistic diversity
- 23 Equality: men and women
- 24 The child
- 25 Elderly
- 26 Integration of persons with disabilities


Art.27-38
Solidarity

- 27 Workers right to information and consultation
- 28 Collective bargaining and action
- 29 Access to placement services
- 30 Unjustified dismissal
- 31 Fair and just working conditions
- 32 Prohibition of child labour; protection at work
- 33 Family and professional life
- 34 Social security and assistance
- 35 Health care
- 36 Access to services of economic interest
- 37 Environmental protection
- 38 Consumer protection


Art.39-46
Citizen's rights

- 39 Vote and stand as candidate to EP
- 40 Vote and candidate at municipal elections
- 41 Good administration
- 42 Access to documents
- 43 European ombudsman
- 44 Petition (EP)
- 45 Movement and residence
- 46 Diplomatic and consular protection


Art.47-50
Justice

- 47 Effective remedy and fair trial
- 48 Presumption of innocence; right of defence
- 49 Legality and proportionality of offences and penalties
- 50 *Ne bis in idem*

- 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

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.

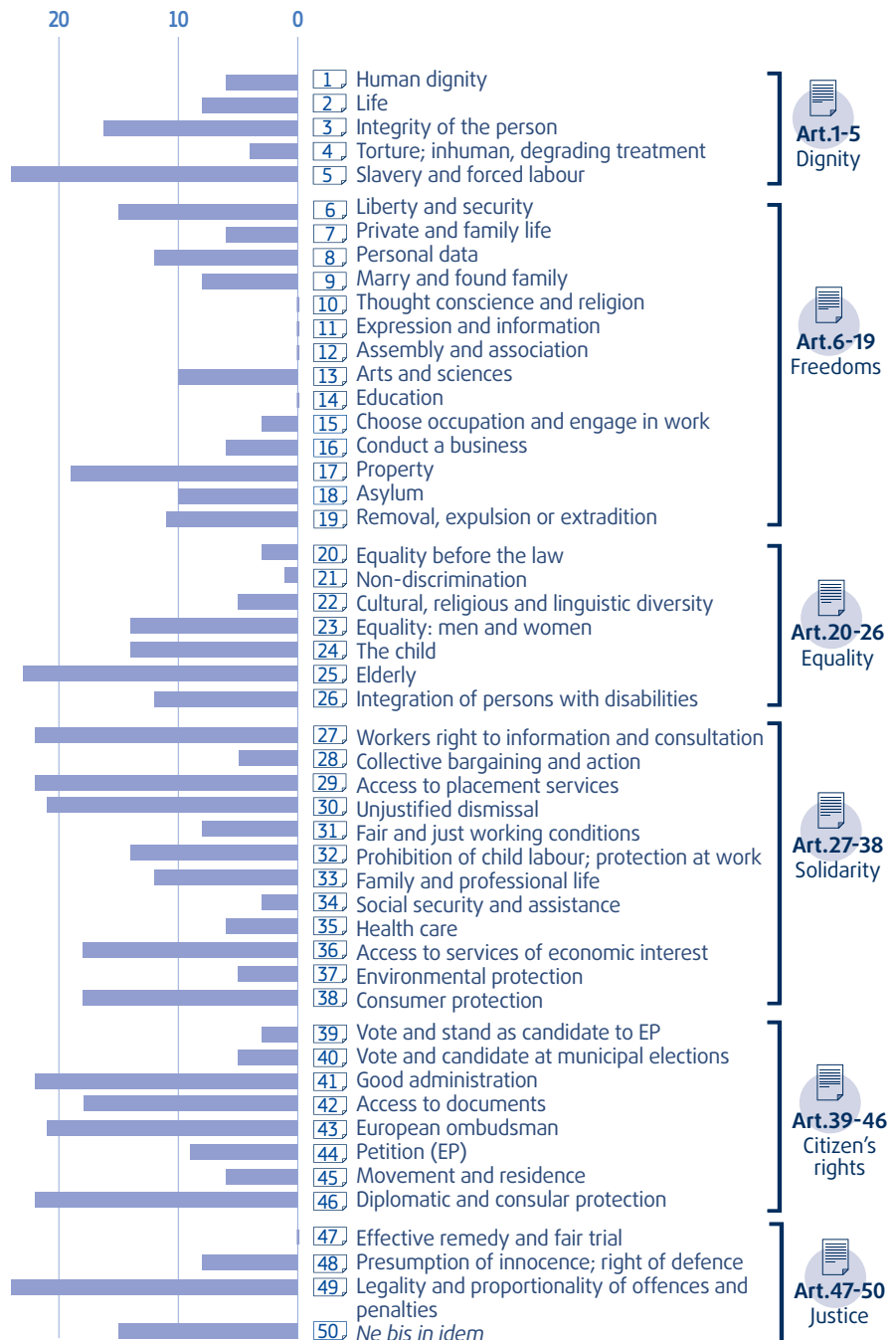
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Austria, some Charter rights appear not to be fully mirrored in national constitutional law – for instance, the right to asylum (Article 18), the rights of the elderly (Article 25), 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), family and professional life (Article 33), social security and social assistance (Article 34), health care (Article 35), access to services of general economic interest (Article 36).

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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