



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in Hungary

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 Hungarian 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 Hungary?

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 Hungary include:

★ National legislation: right to property (Article 17) and right to a fair trial (Article 47)

In 2016, the Constitutional Court (3143/2015 (VII. 24.) AB) of Hungary concluded – in line with its earlier case law – that it does not have a mandate to review whether legislation has, in terms of form and content, been adopted in line with the law of the European Union. The petitioner in the case – a bank – had argued that Act No. XXXVIII of 2014 violated the right to property (Article 17) and the right to a fair trial (Article 47) as laid down in the EU Charter. The Act repealed the exchange rate gap clauses and set a fixed rate. It introduced a statutory presumption of unfairness for unilateral amendment option clauses, which allow financial institutions to increase their interest rates, costs, and fees; and prescribed the procedure through which financial institutions could rebut the presumption. The Constitutional Court did not use the Charter when assessing the legality of Act No. XXXVIII. Instead, it concluded on the basis of national constitutional law protecting property that the Act does not lead to a direct violation of the right to property.

★ National courts: right to good administration (Article 41)

In a 2017 case (17.Pf.21.307/2016/6), a Regional Court of Appeal dealt with the question of whether the alleged violation of the right to a fair procedure and the right to good administration in itself can constitute a violation of personality rights, if this led to the plaintiff not receiving the disability pension to which he was entitled. If this were the case, the question remained whether the authorities were violating the applicant's rights by not delivering a decision within a reasonable time. The court stated that the right to a fair administrative procedure, as enshrined in the Fundamental Law of Hungary, is modelled on the equivalent Charter right (Article 41). It found that this right was not violated by the delay and also held that the mere violation of procedural rights does not amount to the violation of personality rights.

★ Parliamentary debate: equality between women and men (Article 23)

In 2016, two members of parliament submitted a proposal for a parliamentary resolution on the reduction of wage inequality between men and women. They argued that the government should come forward with a legislative proposal to comply with the Charter:

"If [the Government does not propose legislation] we will exercise our rights as Members of Parliament and will submit draft laws in the near future, all the more so because we would like to comply with Article 23 of the EU Charter [equality between women and men], which makes the Government's obligation unequivocal in this field."

Lajos Korozs, Member of Parliament, Hungary, 07.11.2016 session of the Hungarian Parliament; see also **Proposal for Parliamentary Resolution no. H/11718 on narrowing the gap in wages between genders.**

The Hungarian constitution

The Fundamental Law of Hungary

- ★ It was adopted in 2011.
- ★ It consists of six chapters and 132 articles.
- ★ Part 3 of the Fundamental Law of Hungary, entitled *Freedom and Responsibility*, contains 31 articles that cover some socio-economic rights – for instance, the right to education and to adequate working conditions – as well as an emphasis on citizens' obligations and responsibilities.

The constitution, the EU Charter and the ECHR

- ★ No explicit reference is made to the EU Charter or to the **European Convention on Human Rights**. However, both instruments affect the Constitutional Court's interpretation of the constitutional provisions.
- ★ Article E of the Fundamental Law provides that Hungary may, to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, exercise some of its competences jointly with other Member States, through the institutions of the EU.

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.

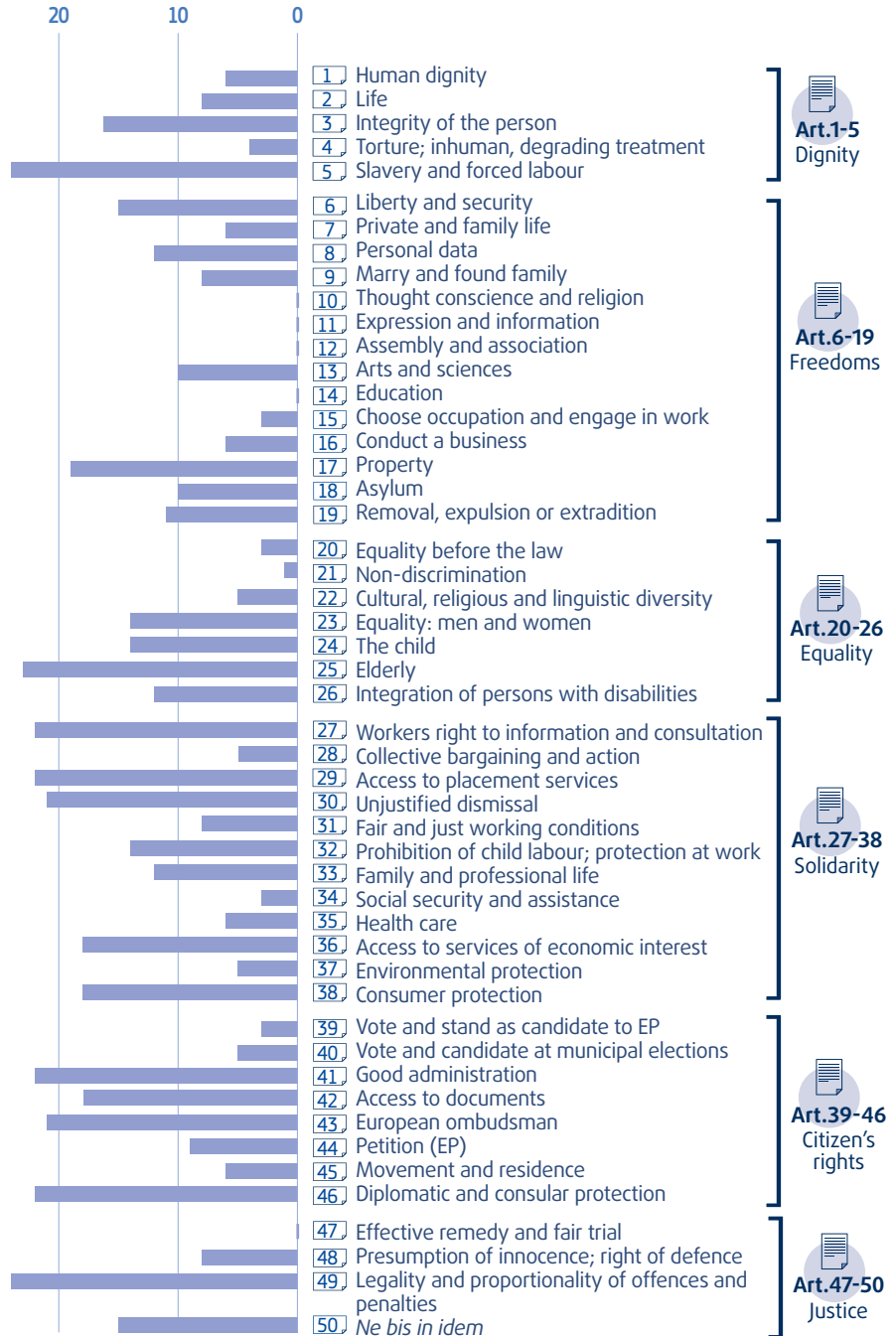
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Hungary, some Charter rights appear not to be fully mirrored in national constitutional law – for instance,

workers’ right to information and consultation within the undertaking (Article 27), right of access to placement services (Article 29), and protection in the event of unjustified dismissal (Article 30).

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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