1 EU Charter of Fundamental Rights and its use by Member States

Since the end of 2009, the EU has its own legally binding bill of rights: the Charter of Fundamental Rights of the European Union, which complements national human rights and the European Convention on Human Rights (ECHR). Whereas national human rights and the obligations under the ECHR are binding on EU Member States in whatever they do, the Charter is binding on them only when they are acting within the scope of EU law. While the EU stresses the crucial role of national actors in implementing the Charter, it also underlines the need to increase awareness among legal practitioners and policymakers to fully unfold the Charter potential. FRA therefore examines the Charter's use at national level.

In autumn 2015, the European Parliament stressed that "national authorities (judicial authorities, law enforcement bodies and administrations) are key actors in giving concrete effect to the rights and freedoms enshrined in the Charter".[1] Indeed, it is mainly at the national level that fundamental rights, as reflected in the Charter, have to be respected and protected to make a difference in the lives of rights holders.

However, awareness of the Charter's content remains low. In February 2015, a Flash Eurobarometer survey did show that general awareness of the Charter's existence has increased, with 40% having heard of the Charter in 2007 and 65% having done so in 2015. But this can hardly be said about the public's understanding of what the Charter is really about: in 2015, only 14 % of respondents said that they were "familiar with the Charter" and knew "what it is" – compared with 11 % in 2012 and 8 % in 2007. This signals a need for awareness raising. Legal practitioners particularly have to be familiar with the Charter's rights if these are to be implemented in practice. In June 2015, the Council of the European Union noted that it is "necessary to continue promoting training and best practice sharing in the field of judiciary at national and EU level thus enhancing mutual trust".[2] The European Parliament echoed this sentiment in September, calling "on the Commission, with the support of the EU Agency for Fundamental Rights (FRA), to strengthen awareness-raising, education and training measures and programmes with regard to fundamental rights".[3]

Against this background, this chapter explores whether, and how, courts and political and other actors use the Charter at national level. Section 1.1 reviews the judiciary's use of the Charter. Section 1.2 looks into legislators' use of the Charter, be it in assessing impacts of national legislation, in compliance reviews, or in legislative texts. Section 1.3 addresses the Charter's use in national policy documents and training activities.

1.1. National high courts' use of the Charter

A review of national high courts' use of the Charter raises various questions. Who is taking the initiative to use the Charter (Section 1.1.1)? In what areas is it used most often, and what Charter rights appear most relevant in national courtrooms (Section 1.1.2)? Do national courts refer Charter-related questions to the Court of Justice of the European Union (CJEU) (Section 1.1.3)? Do national judges refer to the Charter in isolation or in combination with other human rights standards; if the latter, with which standards (Section 1.1.4)? To what extent do national judges address the scope of the Charter (Section 1.1.5)? And, where judges do apply the Charter, what function do they assign to it (Section 1.1.6)?

The following analysis is based on a review of 68 court decisions issued in 26 EU Member States, mostly by constitutional, supreme, cassation, high and supreme

administrative courts. The decisions were selected based on the relevance of the Charter references. The review focused on court decisions that use the Charter in their reasoning; cases in which judges simply refer to the fact that parties cited the Charter were not taken into account. Up to three court decisions per EU Member State were considered. Like last year, no relevant case was identified for **Denmark**. Similarly, no such case was communicated for **Croatia**.

1.1.1. Invoking the Charter: national courts continue to bring 'in' the Charter

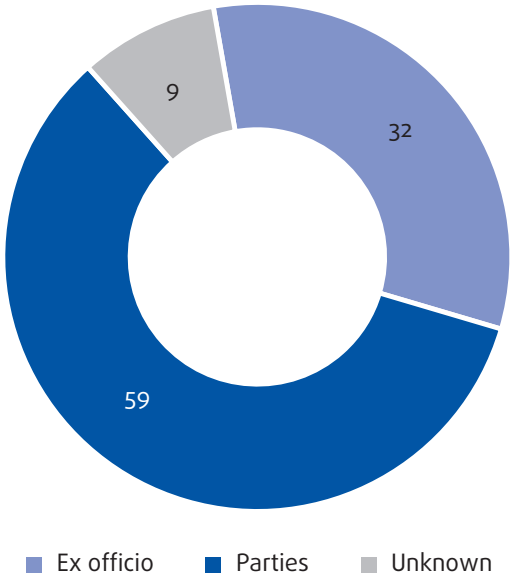
In national courts, parties can invoke the Charter at their own initiative, or judges can invoke it on their own motion. Whether parties and judges can invoke legal sources such as the Charter, and at which stage of a procedure they may do so, depends on the procedural norms in place. In 2015, national court judges referred to the Charter on their own initiative in a substantial proportion of cases: in one third of the decisions analysed, it was the judge(s), and not the parties, who first invoked the Charter. As illustrated in Figure 1.1, in a few cases it was impossible to track who first invoked it. This represents a decrease; in the two previous years, judges invoked the Charter in almost 50 % of cases analysed.

Judges may invoke the Charter to decide in favour of a party's claim or, to the contrary, point out that following a party's arguments would contravene the Charter – an argument made, for instance, in a case before **Bulgaria**'s Supreme Cassation Court.[4]

1.1.2. Procedural rights and policy area of freedom, security and justice remain prominent

As already indicated in previous FRA annual reports, national judges often use the Charter in the area of freedom, security and justice. This trend continued. There was also continuity in terms of the specific rights referred to in the analysed judgments: the right to an effective remedy and to a fair trial (Article 47), the right to respect for private and family life (Article 7), and the protection of personal data (Article 8) remained the most frequently cited. And, as in previous years, the general provisions on its scope and on the interpretation of guaranteed rights (Articles 52 and 51) made up a substantial part of Charter references.

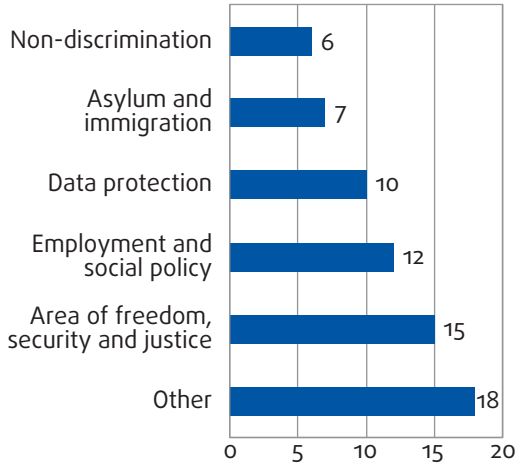
Figure 1.1: National courts: references to the Charter introduced by a party or *ex officio* (on the court's own motion) (%)



Note: *Based on 68 national court decisions analysed by FRA. These were issued in 26 EU Member States in 2015 (up to three decisions per Member State; no 2015 decisions were reported for Croatia and Denmark).*

Source: *FRA, 2015*

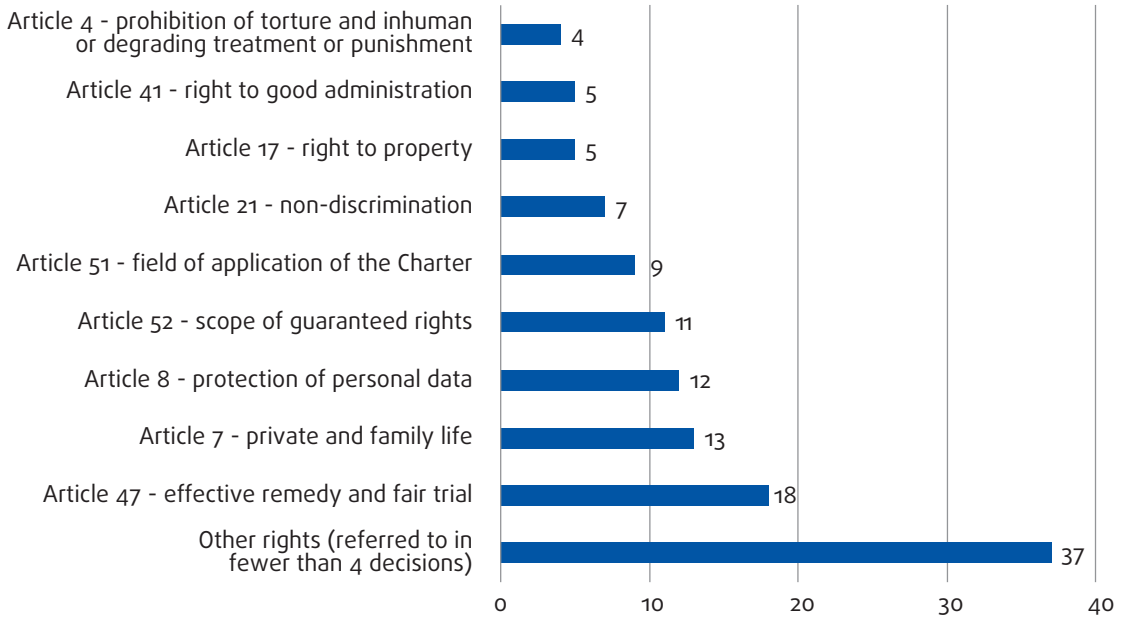
Figure 1.2: Charter-related decisions of national courts, by policy areas



Note: *This chart shows the total number of references made to the Charter in 2015 in 68 national court decisions analysed by FRA. These were issued in 26 EU Member States (no 2015 decisions were reported for Croatia and Denmark).*

Source: *FRA, 2015*

Figure 1.3: Number of references to Charter articles in selected decisions by national high courts



Note: *This chart shows the total number of references made to the Charter in 2015 in 68 national court decisions analysed by FRA.These were issued in 26 EU Member States (no 2015 decisions were reported for Croatia and Denmark).*

Under 'Other rights': three decisions referred to Art. 11, 19, 20, 24, 27 and 50; two decisions referred to Art. 48, 45 and 34; one decision referred to Art. 1, 3, 5, 10, 12, 15, 16, 18, 28, 33, 39 and 49.

Source: *FRA, 2015*

1.1.3. Referring cases to Luxembourg: divergence persists

The dialogue between national courts and the CJEU continued in 2015. Courts from 26 EU Member States sent 435 requests for preliminary rulings to the CJEU – a figure similar to past years. No court in **Malta** or **Cyprus** did so. Thirty-seven of these requests, from courts in 13 Member States, referred to the Charter, corresponding to about one tenth (9 %) of the requests submitted to the CJEU in 2015 – a proportion that remained rather stable in the past three years (see Figure 1.4).

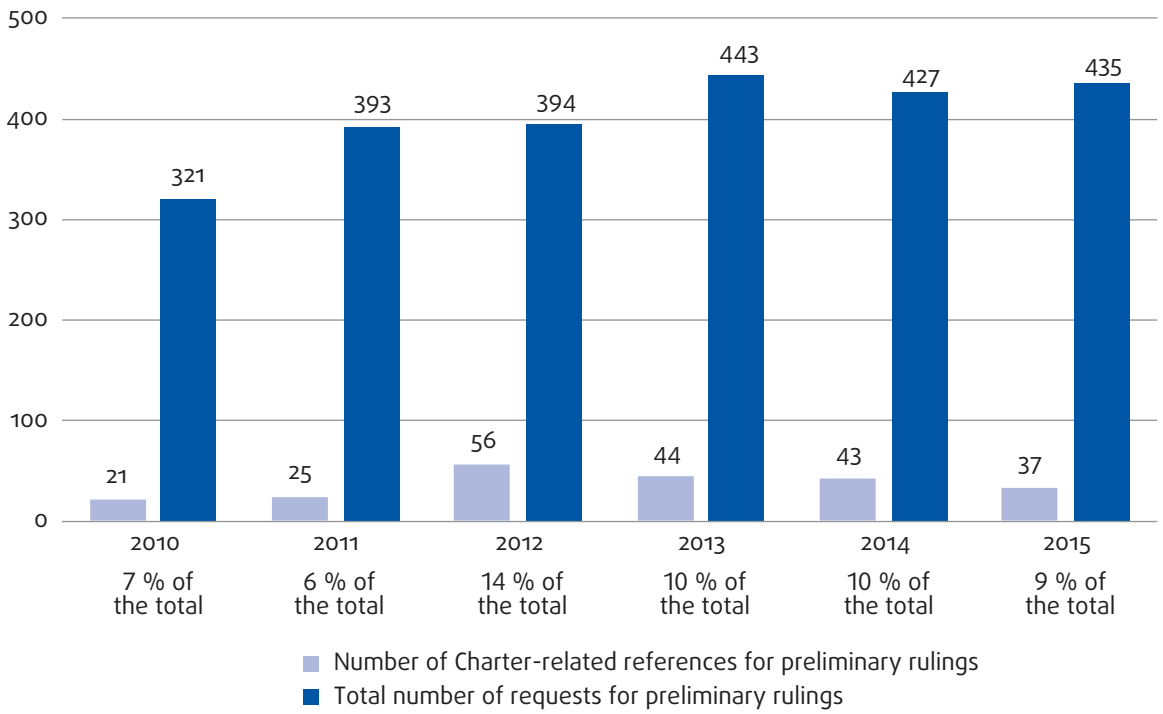
The data available on the CJEU's website reveal large variations between EU Member States, which is also in line with previous years' findings. For example, **Italy** and **Spain** referred many cases to the CJEU in 2015 with about a fifth of these making use of the Charter. Others like **Germany** and the **Netherlands** sent also high numbers of requests for preliminary rulings to the CJEU, but only few referred to the Charter (three of 79 from Germany and one of 40 from the Netherlands). Figures for **France** and the **United Kingdom** are similar with only two requests using the Charter out of the, respectively, 25 and 16 requests to the CJEU. Comparing these figures with those of previous years confirms that the number of references to the Charter in requests for preliminary rulings to the CJEU fluctuate widely. Only from a medium-term perspective do certain patterns emerge:

- **Croatia**, **Cyprus**, the **Czech Republic**, **Denmark**, **Lithuania**, **Malta** and **Sweden** have not referred to the Charter when referring cases to the CJEU in the past five years

- Courts in **Austria**, **Belgium**, **Italy**, **Slovakia** and **Spain** rather regularly referred to the Charter in a significant proportion of their requests for preliminary rulings in the past five years. For the past four years, **Bulgaria** and **Romania** had also regularly referred to the Charter in their requests for preliminary rulings to the CJEU but in 2015 courts made no references to the Charter in their requests.

A request filed by the Administrative Court in **Luxembourg** provides an example of requests submitted to the CJEU in 2015: it asked the CJEU whether, in provisions of the free movement *acquis,* the term "child" should be read as "the frontier worker's 'direct descendant in the first degree whose relationship with his parent is legally established' " or rather as a young person for whom the "frontier worker 'continues to provide for the student's maintenance' without necessarily being connected to the student through a legal child–parent relationship, in particular where a sufficient link of communal life can be identified". The national court asked these questions in the context of Article 33 of the Charter on "family and professional life".[5]

Figure 1.4: Number of Charter-related references for preliminary rulings submitted by national courts to the CJEU in 28 EU Member States, by year



Note: *Updates of data available on the Curia website are not taken into account following publication of this and previous annual reports; the data for 2010-2014 has therefore not been updated.*

Source: *FRA, 2016 (based on CJEU data extracted in March 2016)*

Requests for preliminary rulings can be expected where national courts have doubts about the reach of an EU law provision. However, not all highly important cases reach the CJEU before a national court delivers a decision that relies on the Charter. This is illustrated by two examples analysed in Section 1.1.6: *Benkharbouche/Janah v. Sudan Embassy/Libya* decided in the **United Kingdom** and a **German** Constitutional Court decision on the European Arrest Warrant.

1.1.4. Other human rights sources and the Charter: joining up rights from different layers of governance

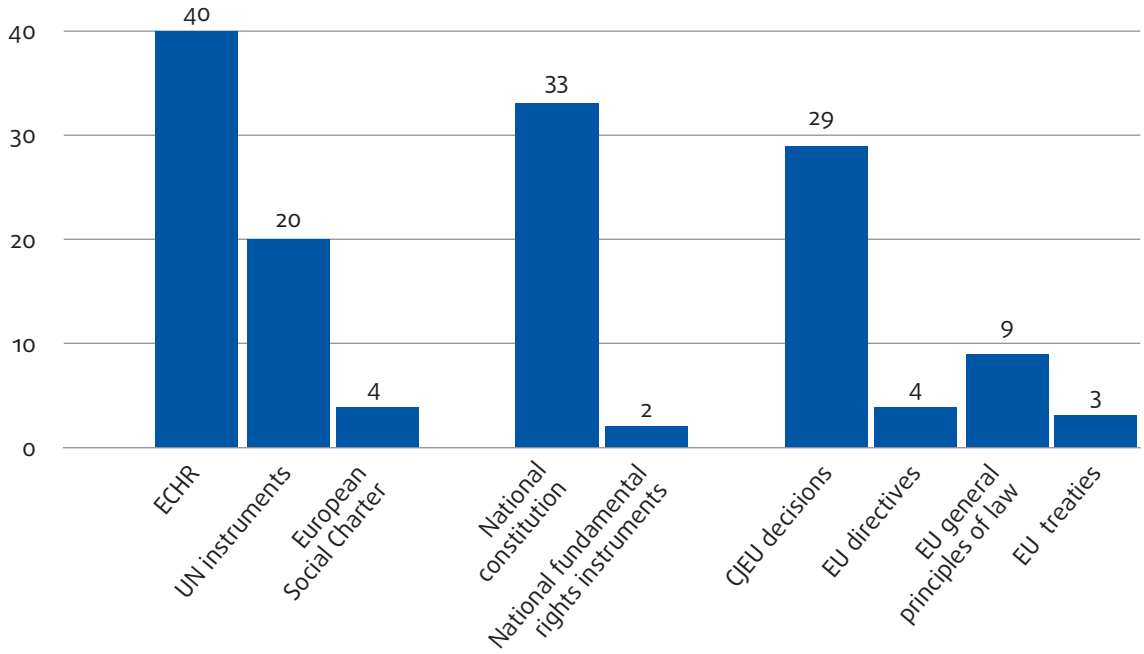
Only five of the 68 cases analysed in 2015 referred to the Charter alone. All other cases referred to the Charter and to other legal sources. Twelve of the analysed decisions referred to the Charter and to the European Convention on Human Rights (ECHR); eight decisions also addressed national constitutional provisions; and 14 decisions referred to the Charter in combination with both national human rights legislation and the ECHR. Twenty-four decisions used the Charter in combination with other EU law sources, such as general principles of EU law or secondary EU law.

Many decisions mention the Charter in combination with sources from different layers of governance, combining references to the Charter with international human rights law and EU law. These findings are in line with previous FRA Annual reports and confirm that national constitutional law and the ECHR play a prominent role in cases referring to the Charter. Similarly, the ECHR remains the legal source most often referred to in decisions using the Charter. Figure 1.5 specifies the absolute numbers of references in the analysed decisions.

1.1.5. Scope of the Charter: an often ignored question

According to Article 51 of the Charter, the Charter applies to Member States only when they are "implementing Union law" – a provision interpreted broadly by the CJEU and legal doctrine as meaning that the facts of the case should fall within the scope of EU law. Although this criterion requires appropriate analysis, it appears that the question of whether – and why – the Charter applies is rarely addressed in detail by national judges. Just as in previous years, courts often relied on the Charter without explaining whether, or why, the Charter legally applies. However, it would be beneficial for national courts to apply a systematic 'Article 51 screening'. This could help ensure that the Charter is referred to in all

Figure 1.5: National court references to different legal sources alongside the Charter (number of total references made to the respective sources)



Note: *Based on 68 national court decisions analysed by FRA. These were issued in 26 EU Member States in 2015 (no 2015 decisions were reported for Croatia and Denmark).*

Source: *FRA, 2015*

cases in which it has the potential to add value; it would also increase awareness of the Charter among the national judiciary and serve legal certainty.

Judgments also again referred to the Charter in cases concerning areas that largely fall outside the scope of EU law. Examples from the area of education include a case in **Greece**, in which the Council of State referred to Article 24 of the Charter in a case concerning a request to annul a Deputy Minister of Education decision on merging primary schools.[6] In the **Czech Republic**, the Constitutional Court had to decide whether it was legitimate to ban the meeting of an anti-abortion association on a town square near a primary school. The meeting included an exhibition of photos of aborted human embryos and Nazi symbols, with abortions compared to the Nazi genocide. The municipality banned the event to protect children from the shocking photos – a decision the Constitutional Court deemed legitimate in a judgment that also referred to the EU Charter of Fundamental Rights.[7]

Some cases, however, clearly addressed the scope of EU law and the Charter's applicability. Again in the area of education, in a case litigated in the **Netherlands**, parents argued that compulsory education without exemptions for children of parents with particular religious persuasions conflicts with the ECHR and the Charter. The parents maintained that they should be free to act in line with their beliefs and remove their child from school. The Supreme Court stated very clearly: "No Union law is implemented in the current prosecution, as the Act on Compulsory Education on which the prosecution is based does not implement Union law. Moreover, in other respects as well there is no legal situation within the scope of Union law".[8]

Some cases addressed the Charter's applicability in more detail before excluding it. For instance, the Supreme Court of **Cyprus** did so 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.[9] Therefore, the Charter was not to be applied – although this did not prevent the court from stating that, even if it were, the legislative provisions under review would not conflict with the Charter. In fact, courts in various Member States, including **Estonia**[10] and the **Netherlands**,[11] used the Charter in cases dealing with the legality of national legislation implementing the Data Retention Directive, which was declared null and void by the CJEU. Chapter 5 contains further information on court decisions regarding this directive.

A decision by **France**'s *Conseil d'Etat* also paid considerable attention to the reach of EU law. The case concerned a citizen of both Morocco and France who was stripped of French nationality after a final judgment of the High Court of Paris convicted him of participating in a criminal association to prepare an act of terrorism. Indirectly recognising that the case fell within the reach of EU law, the court referred to Articles 20 and 21 of the Charter; it then checked the case against the more detailed parameters developed in relevant CJEU case law (*Rottman v. Freistaat Bayern* (C-135/08)) to conclude that the withdrawal was not inconsistent with EU law.[12] A judgment by the Federal Court of Justice in **Germany** also made rich reference to CJEU case law. The case concerned litigation between the Stokke company, which sells high chairs for babies, and the internet trading platform eBay. Stokke claimed that offers by competitors are displayed as hits when eBay visitors use trademark labels registered by Stokke as search words. The court described the complex interaction of the protection of personal data (Article 8), the right to conduct a business (Article 16), and the right to an effective remedy and a fair trial (Article 47) and concluded that eBay is required to perform supervisory duties with regard to trademark infringements on its online trading platform if notified about violations by trademark holders. Similarly, the **Greek** Council of State also referred extensively to CJEU case law (*Åklagaren v. Hans* Åkerberg *Fransson (*C-617/10)) in a judgment concerning double penalties (monetary fine and penal sentence) imposed for smuggling; the council found that these complied with the Charter.[13]

"By interpreting EU directives the national courts are bound to ensure a fair balance of fundamental rights, protected by the Union's legal order, as well as of general principles of Union law."

Source: Germany, Federal Court of Justice, Decision No. I ZR 240/12, 5 February 2015

1.1.6. Role of the Charter: interpretative tool, constitutional benchmark and individual horizontal right

National courts sometimes use the Charter to grant direct access to an individual right or to assess the legality of EU legislation. However, 2015 data confirm that the Charter is most often used in interpreting national law or EU secondary law. Courts also sometimes consider the Charter as part of their constitutional reviews of national laws; in 2015, national courts even attributed forms of direct horizontal effect to a Charter provision, signalling that it can apply between individuals rather than only between an individual and a public authority. Finally, the Charter also serves as a source of legal principles that can address gaps in national legal systems.

1.1.7. Legal standard for interpreting national and EU legislation

In late 2015, the **German** Constitutional Court delivered a decision that interpreted the European Arrest Warrant in light of the Charter. The case concerned a U.S. citizen who was sentenced to 30 years in custody by a final judgment of the Florence *Corte di Appello* in 1992, for participating in a criminal organisation and importing and possessing cocaine. Over 20 years later, in 2014, he was arrested in Germany based on a European arrest warrant. In the extradition proceedings, he submitted that he did not have any knowledge of his conviction and that, under Italian law, he would not be able to have a new evidentiary hearing in the appellate proceedings. The Higher Regional Court declared the complainant's extradition to be permissible and the case was brought before the Constitutional Court in Karlsruhe. The case raised major interest because the court referred to, and explained in detail, the German Basic Law's so-called 'identity clause'. That clause may, by way of exception to the general rule, limit the precedence of EU law over national law. In exceptional cases, where EU law is "*ultra vires*" (goes beyond the competences laid down in the treaties) or interferes with principles protected by the constitutional identity as protected by the German Basic Law, Union law may ultimately have to be declared inapplicable. Under Germany's constitutional identity, criminal law is based on the principle of individual guilt, which in itself is enshrined in the guarantee of human dignity and in the rule of law. The court stated that the effectiveness of this principle is at risk where, as appeared likely in the case in question, it is not ensured that the true facts of the case are examined by a court.

The Constitutional Court argued that such an 'identity review' is a concept inherent in Article 4 (2) of the Treaty on European Union (TEU) and, as such, does not violate the principle of sincere cooperation under EU law as outlined in Article 4 (3) of the TEU. The court also stressed that the identity review does not threaten the uniform application of Union law, because the powers of review reserved for the Federal Constitutional Court have to be exercised with restraint and in a manner open to European integration. Importantly, the court concluded that, in this case, there was no need to apply the identity clause and that the primacy of Union law was not restricted, because the obligation to execute arrest warrants in a manner compatible with fundamental rights is already guaranteed under European Union law in itself. The Framework Decision on the European Arrest Warrant, the court stressed, must be interpreted in line with the Charter and the ECHR. Therefore, it is EU law itself that "not only allows that the national judicial authorities establish the facts of the case in a rule of law based procedure, but requires such a procedure".[14] Thus, the court used the Charter and its linkage to the ECHR to interpret EU secondary law in a way that avoids any conflict with a fundamental rights guarantee (the

right to dignity) at national level. The court argued that this reading of the framework decision was so obvious that there was no need to refer a question to the CJEU ("*acte clair*" doctrine).

"The Charter of Fundamental Rights requires [...] that the court in the executing state eventually receiving appeals against an in absentia judgment is mandated to hear the accused person and examine the allegations not only in law but also in facts. [...] An European Arrest Warrant must not be executed, if such an execution would not be in line with the Charter of Fundamental Rights, which has a higher rank than the Framework Decision on the European Arrest Warrant."

Source: Germany, Constitutional Court, 2BvR 2735/14*, 15 December 2015, paras. 94, 96, 98*

Courts interpret national law in line with the Charter – particularly in the context of applying EU secondary law. For instance, in **Lithuania**, the Supreme Court interpreted national law in line with the Charter against the background of the EU Data Protection Directive. The case concerned litigation between two joint owners of a house. One of the owners decided to install surveillance cameras on his part of the building without asking for permission from the second owner – whose part of the property and house was put under constant surveillance by the cameras. The second owner reacted by bringing a case against his co-owner. The question to be decided by the court was whether, and to which degree, such a private use of cameras falls within the scope of the law on legal protection of personal data. The court referred to the Charter, including the respect for private and family life (Article 7) and the protection of personal data (Article 8). It noted that processing data in the course of a purely personal or household activity is not covered by the respective norms, but emphasised that such an exception from the scope of data protection should be interpreted narrowly – and decided in favour of the claimant.[15] A case confronted by the **Czech** Constitutional Court 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.[16]

"The Charter guarantees every EU citizen the right to vote for Members of the European Parliament in elections by direct universal suffrage in a free and secret ballot, under the same conditions as nationals of the given State (Article 39 of the Charter), but the Charter does not guarantee an equal share of representation in the election results based on the national election legislation that implements the Act in Member States."

Source: Czech Republic, Constitutional Court, Decision No. CZ:US:2015:Pl. US.14.14.1*, 19 May 2015*

The fundamental rights implications of implementing EU funds was addressed by the European Ombudsperson,[17] in academia,[18] and also by some national courts. In the **Czech Republic**, the Constitutional Court made rather detailed reference to CJEU case law in a case concerning a project co-financed by the EU Operational Programme Research and Development for Innovations. The Ministry of Education, Youth and Sport decided to stop the funding, claiming the Technical University of Ostrava had broken financial rules. The university appealed. The case, including the question of whether there should be a judicial review at all, went up to the Constitutional Court. The court concluded that "it is clear that introducing a judicial review in this case is not in contradiction with EU law; on the contrary, the absence of it would probably be in conflict with the case law of the CJEU or the Charter."[19]

1.1.8. Legal standard for constitutional reviews of national laws

The Charter can also be used in the context of constitutionality reviews of national legislation, and courts again did so in 2015. In **Portugal**, under Article 278 of the country's constitution, the president sought an *ex ante* evaluation of the constitutionality of a provision in a parliamentary decree sent to him for promulgation. The decree – on Portugal's information system – allowed certain officials from the Security Information Service and the Strategic Defence Information Service to access, in specific circumstances, banking and tax data, data on communication traffic, locality, and other information. The Constitutional Court referred to respect for private and family life (Article 7 of the Charter) and the protection of personal data (Article 8 of the Charter), among other principles, and declared the provision unconstitutional.[20] In **Slovakia**, 31 members of parliament submitted a motion to check whether the Electronic Communications Act, the Criminal Procedure Code and the Act on Police Force are compatible with the Charter, the ECHR, and the constitution. The Constitutional Court found the Charter applicable and stated that, in accordance with Article 7(5) of the constitution, it took precedence over domestic legislation; however, because it found that the challenged legislation was unconstitutional, the legislation's compatibility with the Charter did not need to be further established.[21]

"Given the constant case law of the Constitutional Court, which, in accordance with the principle of pacta sunt servanda*, requires that the fundamental rights and freedoms under the Constitution be interpreted and applied at least in the sense and spirit of international human rights and fundamental freedoms treaties [...] and the relevant case law issued therewith [...], fundamental rights and freedoms under the Constitution need to be interpreted and applied within the meaning and spirit of the Charter and relevant case law issued by the ECJ [European Court of Justice] in cases where the challenged national legislation falls within the scope of the EU law."*

Source: Slovakia, Constitutional Court, Decision No. PL. ÚS 10/2014-78*, 29 April 2015*

The Constitutional Court of **Romania** addressed to what degree the Charter can be relied upon to review national legislation in a case on collective redundancies in the context of insolvency procedures.[22] The Romanian constitution was changed in 2003 to enshrine, in Article 148, a provision guaranteeing the supremacy of EU acts over Romanian laws (but not the constitution). Quoting its earlier case law, the court stated that "using a rule of European law in the constitutional review as the reference standard involves, under Article 148 paragraphs (2) and (4) of the Constitution, two cumulative requirements: on the one hand, that the rule must be sufficiently clear, precise and unequivocal itself or its meaning must be clearly established, precise and unambiguous; on the other hand, that the rule must have a certain level of constitutional relevance, so that it can be used to find a violation of the Constitution by national law – the Constitution being the only direct reference in the constitutionality review".

The case at issue concerned a series of collective redundancies based on Article 86 (6) of Law No. 85/2006 on insolvency procedures. This provision establishes an exception, allowing dismissals without undergoing the collective redundancies procedure and providing that employees receive only 15 days' notice when dismissed under such circumstances. A number of cases pending before national courts questioned the constitutionality of this provision, with former employees represented by their trade unions. The Constitutional Court declared unconstitutional the bypassing of the collective redundancies procedure, but accepted the 15 days' notice. It referred explicitly to the workers' right to information and consultation within the undertaking (Article 27 of the Charter) and deemed this provision "sufficiently clear, precise and unambiguous", meaning it fulfilled the first requirement mentioned above. The court continued: "On the second requirement, the Court finds that the content of the legal acts of the European Union protects the right to 'information and consultation', supporting and complementing the activities of the Member States, therefore aimed directly at the fundamental right to social protection of labour provided by Article 41 paragraph (2) of the Constitution as interpreted by this decision, the constitutional text which ensures a standard of protection equal to that resulting from the acts of the European Union. It follows, therefore, that the European Union acts mentioned above [including Article 27 of the Charter] have an obvious constitutional relevance, which means they relate to Article 41 para. (2) of the Constitution by fulfilling both the requirements mentioned above, without violating the national constitutional identity".

The Constitutional Court of **Hungary** took a more hesitant position. In line with its earlier case law, it concluded 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.[23] 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 Charter. Act No. XXXVIII of 2014 repealed the exchange rate gap clauses and set a fixed rate. It introduced a statutory presumption of unfairness for unilateral amendment option clauses allowing financial institutions to increase their interest rates, costs, and fees; and prescribed the procedure through which financial institutions could rebut the presumption. The act also retroactively established conditions against which the fairness of the unilateral amendment option clauses was to be assessed; mandated a procedure with short deadlines; and limited the possibility to present evidence. The Constitutional Court did not use the Charter when assessing the legality of Act No. XXXVIII of 2014. 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, as it primarily protects property that has already been acquired, and only exceptionally protects future acquisitions.

1.1.9. Direct horizontal effect

Concerning the effects of Charter rights, the question of the Charter's horizontal application continued to raise considerable interest amongst experts in 2015, as the amount of academic writing on the topic shows.[24] National courts issued important decisions on this matter. Following up on a court decision of 2013, the Court of Appeal (Civil Division) in the **United Kingdom** concluded – in the joined appeals *Benkharbouche v. Embassy of the Republic of Sudan* and *Janah v. Libya* – that the right to an effective remedy and a fair trial (Article 47) can have direct horizontal effect in the national system.[25] The case concerned two employees of the embassies of Sudan and Libya in the UK. They made several employment claims, which the employment tribunal turned down because the employees were considered 'members of the mission' under the State Immunity Act 1978. This raised the question of whether this procedural limitation imposed by the State Immunity Act was compatible with the right to an effective remedy and a fair trial under Article 47 of the Charter and Article 6 of the ECHR. It was uncontested that both persons' claims fell under EU law: one employee's claims under the Working Time Regulations and the other's under the Working Time Regulations and the Racial Equality Directive. But the court needed to resolve whether Article 47 could be given direct horizontal effect, meaning that the appellants could rely on it even though Libya is not a Member State or one of the EU institutions referred to in Article 51 of the Charter (Libya, not bound by EU law, is here equated to a private party). Secondly, the court had to decide if it could simply

disapply the relevant sections of the State Immunity Act. The court referred extensively to CJEU case law – including *Association de Médiation Sociale v. Union locale des syndicats CGT and others* (C-176/12), which denied horizontal applicability to the workers' right to information and consultation within the undertaking (Article 27 of the Charter). It stated that, in contrast to Article 27, the right to an effective remedy and a fair trial (Article 47 of the Charter) reflects a general principle of law "which does not depend on its definition in national legislation to take effect".

Granting direct horizontal effect to the *procedural* provision of Article 47 of the Charter allowed the Court of Appeal to disapply the provisions of the State Immunity Act that conflict with the Charter, enabling the two claimants to further pursue their *substantive* claims under the relevant provisions of the Working Time Regulations and the Racial Equality Directive. The decision showcases the difference in the procedural force of the ECHR and the Charter against the background of the **United Kingdom**'s specific legal situation. Although the UK Human Rights Act allows courts – only higher courts – to issue a 'declaration of incompatibility' when an act of parliament is not in line with the ECHR, the act remains in force and is only for parliament to amend. In contrast, courts – including lower courts – that come across human rights enshrined in EU law have to disapply contrasting national norms if EU human rights are directly applicable. The *Benkharbouche* decision is still under appeal to the Supreme Court.

"As this court stated in Benkharbouche at paras 69 to 85, (i) where there is a breach of a right afforded under EU law, article 47 of the Charter is engaged; (ii) the right to an effective remedy for breach of EU law rights provided for by article 47 embodies a general principle of EU law; (iii) (subject to exceptions which have no application in the present case) that general principle has horizontal effect; (iv) in so far as a provision of national law conflicts with the requirement for an effective remedy in article 47, the domestic courts can and must disapply the conflicting provision; and (v) the only exception to (iv) is that the court may be required to apply a conflicting domestic provision where the court would otherwise have to redesign the fabric of the legislative scheme."

Source: United Kingdom, Court of Appeal, Decision No. A2/2014/0403, *27 March 2015, para. 98 (under appeal)*

A similar decision was issued in a case involving Google (based in the USA) and internet users in the **United Kingdom**.[26] Google tracked private information about the claimants' internet use – without their knowledge or consent – by using cookies and gave that information to third parties. Google's publicly stated position was that such activity would not be performed without users' consent. The claimants sought damages for distress under the Data Protection Act, but did not claim any pecuniary loss. They argued that interpreting the Data Protection Act's provisions on 'damage' as requiring pecuniary loss amounted to not effectively transposing Data Protection Directive 95/46/EC into domestic law. Just as in the case described above, the national appellate court concluded that Article 47 applied directly between the parties. It further stated that national norms obstructing access to effective judicial remedies in violation of the Charter could simply be disapplied because it was clear to which degree national law had to be set aside and no choices had to be made to devise a substituted scheme (which could be seen as the court replacing a "carefully calibrated Parliamentary choice").

1.1.10. Inspirational standard for filling 'gaps'

The Charter can also be a relevant reference point for courts looking to close gaps left open in national systems. For instance, national courts in **Malta** have in the past referred to the Charter to justify awarding compensation in contexts where national law does not establish entitlement to compensation. In a 2015 civil court decision, the court explicitly excluded the Charter's applicability, but mentioned that lower courts have 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.[27] 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.

A very different, but related, case arose before the Constitutional Court in **Spain**. In that case, the Charter was referred to by a dissenting judge who claimed that the court's majority vote misinterpreted the reach of the right to conscientious objection – a right mentioned in the Charter but not in Spanish constitutional law. The case concerned a pharmacy co-owner's refusal, based on conscientious objection, to sell condoms and the 'day-after pill'. His defence relied on, among others, Article 16 of the Spanish Constitution, which guarantees ideological and religious freedom. The court affirmed the claimant's right to conscientious objection, which it deemed part of the fundamental right of ideological freedom. The dissenting judge used the Charter to contest the presumption used in the court's reasoning. In her dissenting opinion, the judge referred to the Charter's right to freedom of thought, conscience and religion (Article 10) and the preparatory work of the Charter (Article 51(7)) to emphasise that only legislators may establish how the right to conscientious objection can be exercised in contexts where conflicts between different fundamental rights may arise.

"[T]he right to conscientious objection is the only right of the Charter for which the explanations do not refer to an additional source for its recognition, as for example the [ECHR…] The reference that Article 10.2 of the Charter makes to 'national laws' highlights firstly the lack of a 'common constitutional tradition' to which EU institutions could directly refer. Secondly, it underlines the need for the national legislator to acknowledge the possibility of conscientious objection in the different contexts of the activity that may be detrimental to citizens' rights. In other words, outside the constitution and the law, nobody can use their conscience as supreme norm, and nobody can object when and how they want to."

Source: Spain, Constitutional Court, dissenting opinion by Judge Adela Asua Batarrita, Decision No. STC 145/2015*, 25 June 2015*

As pointed out in last year's Annual report, the right to good administration (Article 41 of the Charter) appears to influence national administrative cases, even though this provision is directed to the "institutions, bodies, offices and agencies of the Union". For example, **Italy**'s Lazio Regional Administrative Tribunal in 2015 ruled on a complaint filed by a lawyer who was refused admission to the oral test of the bar examinations by the Bar Examinations Board of the Ministry of Justice.[28] The court ruled that the Ministry of Justice's decision did not comply with the minimum conditions of transparency, stating: "The lack of motivation directly affects the administrative act, thus hindering compliance with the parameter set out in Article 3 of Law No. 241/1990, interpreted in the light of Article 97 [on impartiality of public administration] of the Italian constitution and of Article 41 of the EU Charter of Fundamental Rights, which expressly sets out the obligation to state reasons as an aspect of the right to good administration."

"The Charter of Fundamental Rights of the European Union establishes the right to good administration, which means that institutions must handle requests impartially, fairly and within a reasonable time […] The principle of accessibility to public services means that an institution of public administration has the obligation to consult the applicant on how to initiate the process concerning the relevant issue, and to provide information enabling a private person to find the most effective ways to attain desired aims."

Source: Lithuania, Supreme Administrative Court, Decision No. eA-2266-858/2015*, 7 July 2015*

1.2. National legislative processes and parliamentary debates: limited relevance of the Charter

In many systems, including at the EU level, impact assessments inform the drafting of legislative bills by examining the potential impact of different aspects of legislative proposals. Impact assessments most commonly focus on economic, social or environmental impacts, but fundamental rights are increasingly taken into consideration. As Section 1.2.1 shows, legislators can, and sometimes do, refer to the Charter in such assessments. Moreover, all draft legislation has to undergo legal scrutiny to see whether it is in line with human rights standards; as outlined in Section 1.2.2, the Charter can play a role in this context, too. The Charter may also be referred to in the final versions of legislative texts, although this remains rare – as discussed in Section 1.2.3. Finally, as Section 1.2.4 illustrates, the Charter is also cited in political debates on legislative initiatives and in other parliamentary debates.

1.2.1. Assessment of fundamental rights impacts

Many Member States appear to have conducted *ex ante* impact assessments of their legislation as a regular practice in 2015, if not as a mandatory part of the pre-legislative process. For 18 Member States, at least one example of an impact assessment referring to the Charter was identified. However, it has to be emphasised that these references were often superficial and sometimes not part of the assessment itself, but rather part of the justifications cited for the draft law. For instance, in **Germany**, the opposition Left Party tabled a proposal to amend the Basic Law, with the aim of extending fundamental rights guaranteed to German citizens (the freedoms of assembly and association, free movement, and free choice of profession) to citizens of other states. The section of the proposal outlining justifications for the law mentions the EU Charter of Fundamental Rights four times.[29]

In countries such as **Belgium**, **Croatia**, **Denmark**, **Estonia**, **France**, **Germany**, **Greece**, **Italy**, **Lithuania** and **Poland**, impact assessments are mandatory. In other Member States (such as **Austria**, **Ireland, Malta** and the **United Kingdom**), they are regular practice. However, even when states have mandatory and systematic impact assessments, these may not necessarily take the Charter into consideration. In **Greece**, for example, bills are subject to systematic and mandatory impact assessments. These must follow a template of questions to be answered. One question explicitly refers to the ECHR and the jurisprudence of the European Court of Human Rights, but not to the EU Charter of Fundamental Rights.[30] In **Finland**, the government issued two manuals[31] to assist the drafting of legislation; both explicitly state that the Charter should be taken into consideration.

In a sample of 33 impact assessments examined in 2015, two policy areas were especially prominent: criminal law and data protection. Two thirds of the impact assessments examined involved these two areas. Just as in previous years, impact assessments referred to the Charter alongside other international

human rights references, making it difficult to track the impact of such references. There are, however, cases where impact assessments affected the initial proposals. In **Slovenia**, the Information Commissioner acknowledged, in the context of discussing the Court Register of Legal Entities Act,[32] that strengthening public scrutiny of public spending is a legitimate aim. However, he stressed that the act had to be aligned with the right to private life and family life (Article 7) and the protection of personal data (Article 8). These concerns were partly addressed in the final proposal by reducing the amount of publicly accessible data.

"The significance of the European Union as an actor in the field of fundamental and human rights has increased, and EU law has a notable impact on the realisation of rights at the national level. The fundamental rights norms of the EU must be introduced more clearly to the work of national authorities and courts, and there is a need to increase awareness concerning the content of rights and principles that are protected by the Charter of Fundamental Rights and the way these rights and principles are applied. This has been the position of the Grand Committee of the Parliament in its statement 6/2014. Guardians of law, other oversight authorities, courts and other human rights actors have a central role in this process."

Source: Finland, Chairperson of the parliament's Constitutional Law Committee, parliamentary debate on the Annual Report 2014 of the Parliamentary Ombudsman, 2 December 2015

1.2.2. Assessment of fundamental rights compliance

In most Member States, draft legislation is systematically checked against the constitution and various international instruments (especially the ECHR) to make sure it is in line with the relevant human rights standards. For 19 Member States, at least one example of legal examinations referring to the Charter were identified in 2015; in total, 46 were identified. However, as the example of **Malta** shows, these documents are not necessarily accessible to the public. Moreover, the Charter is sometimes referred to peripherally but not actually applied in the legal scrutiny of the legislative proposals, as an example from **Sweden** shows.[33]

The authors of the legal assessments vary. Of the 46 compliance checks examined, 20 were carried out by independent administrative or judicial bodies, 21 by political actors (government, parliamentary group) and five by civil society institutions. Draft legislation was particularly often checked against the Charter in the areas of data protection and intelligence: 27 of the 46 compliance checks concerned these two areas, with one third of the assessments pertaining to data protection. For instance, in **Poland**, the modification of the Act on Police prompted the Inspector General for Personal Data Protection to intervene, with her opinion referring to the respect for private and family life (Article 7) and the protection of personal data (Article 8).[34] In **France**, the National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme*, CNCDH) issued an opinion[35] that mentioned the Charter in the context of intelligence-gathering legislation. When the **Danish** Security Intelligence Service Act and Customs Act were amended, the proposer of the bill noted the risk of interference with Article 7 and 8 of the Charter but added that this risk was justified and in line with Article 52 of the Charter.[36] Article 52, which describes the scope and the interpretation of the rights and principles laid down in the Charter, also played an important role in an opinion issued by the Human Rights League in **Luxembourg**. The opinion claimed that a bill on the reorganisation of the state's intelligence services did not sufficiently address the proportionality of the means used by the intelligence agencies.[37] The **Portuguese** Data Protection Authority raised concerns in comments on a draft law on the Information System of the Portuguese Republic, referring to the CJEU's Charter-related case law.[38] In **Germany**, a draft law on the mandatory retention of telecommunications metadata was accompanied by an assessment of whether the data retention was compatible with EU law. That analysis was based in large part on the Charter.[39]

Similarly to previous years, the Charter's role appeared limited or difficult to quantify. However, there were instances where Charter compliance checks made a difference. To give an example from criminal law, a draft law introduced by the president of **Lithuania** stipulated, among other things, that an alien's request for a residence permit shall not be considered if a relevant institution has received information that the alien is suspected of committing a crime abroad.[40] The European Law Department of the Ministry of Justice issued an opinion pointing out that such a provision may contravene the presumption of innocence (Article 48 of the Charter). The final law does not contain the criticised provision. Also, in the **Netherlands**, the government appeared to accept advice received from the National Commission for International Private Law during the review of a draft law against forced marriages.[41] The draft legislation did not recognise marriages between cousins concluded in other countries, which the commission identified as a violation of the right to marry (Article 9).

1.2.3. National legislation

Whereas the Charter plays a certain role in impact assessments and legal compliance checks, it is hardly ever referred to in the final texts of national legislation. The Charter is sometimes referred to in draft legislation or in texts accompanying such legislation. For **Germany**, nine draft laws referencing the Charter were identified in 2015.[42] Meanwhile, 11 final legislative texts from six Member States were identified as having references to the Charter in 2015; in 2014,

15 such statutes were identified in nine Member States. Of these 11 statutes, three are from **Croatia** and three are from **Spain**. The other statutes were from **France**, **Ireland**, **Italy** and **Latvia.** In Spain, similarly to the previous year, two of the three statutes mentioning the Charter were adopted at regional level. The laws concern very different areas. In **Croatia** and **Spain**, the legislative texts concerned persons with disabilities. Legislation on criminal justice also had references to the Charter (**Ireland** and **Spain**). Some of the laws have a clear link with EU legislation; this was the case in **Ireland**, where the law reproduced the text of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, which in turn contains a reference to the Charter.[43] In other cases, such as a regional law in **Spain** and a national law in **Croatia**, the link to EU law is much less obvious.

"The Charter of Fundamental Rights of the EU, proclaimed at the Nice European Council on 7 December 2000, recognises for the first time in Europe the right to good administration. According to what is established in Article 6 of the Lisbon Treaty, such Charter has the same legal force as the treaties of the EU. Even though such legal force is not of direct application to the acts that Member States or Autonomous Communities adopt in the framework of their competencies, it has to be taken as an action framework for public activity. Article 41 of the Charter makes express reference to the importance for institutions to address issues in an impartial and fair manner, within reasonable deadlines and invokes the right of citizens to be heard, to access personal files and to address public administration and be treated in one's own language, as well as the obligation for the Administration to motivate the acts that affect the person concerned."

*Source: Spain, Galicia, Act 1/2015 of April 1 on the guarantee of the quality of public services and sound management (*Ley 1/2015, de 1 de abril, de garantía de la calidad de los servicios públicos y de la buena administración*), 2015*

1.2.4. Parliamentary debates

The Charter continued to be referred to in parliamentary debates in 2015. Such references were reported for 21 EU Member States in 2015 – compared with 12 in 2014. Of the 239 references, FRA closely reviewed 45 that more prominently cited the Charter. In half of these cases, the Charter was cited alongside other international human rights instruments. The references to the Charter tended to be made in passing. For example, a search for "Charter of Fundamental Rights" in the database for parliamentary debates in the **Netherlands** yields 106 hits for 2015, the majority of which lead to Charter references that do not cite the Charter in detail but rather include it as one of many background materials for the debate.[44]

The respective discussions covered a very wide spectrum of thematic areas. Some emphasised the

"When monitoring the electoral campaign and presenting the election activities, all media publishers are obliged to guarantee journalistic independence, professionalism and expertise, consistent compliance with the journalistic code and especially the fundamental principle of freedom of expression that is provided by the provisions of the Croatian Constitution, the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union Charter of Fundamental Rights, guided by the interests of the public at the same time."

*Source: Croatia, Act on Election of Representatives to the Croatian Parliament (*Zakon o izborima zastupnika u Hrvatski sabor*), 2015*

EU law dimension, as was the case with a parliamentary question in **Italy** aimed at stopping prefects from cancelling the registration of certifications of same-sex marriages entered into abroad.[45] But the debates did not necessarily deal with issues falling within the scope of EU law. For instance, in **Austria**, the Charter was mentioned during discussions of a report by the parliament's Human Rights Committee on Austria's leading role in abandoning the death penalty.[46] Similarly, the Charter was mentioned in the **Dutch** parliament[47] during a discussion about statements made by the prime minister of Hungary. The prime minister had stated in April that the death penalty should be kept on the agenda, adding – after international protest – that there was no plan to introduce the death penalty in Hungary. Article 2 of the Charter declares everyone's right to life: "No one shall be condemned to the death penalty, or executed".

In **Bulgaria**, the Charter was referred to in the context of draft amendments to the criminal law. The debate concerned proposals submitted by the populist party *Ataka*. One proposal aimed to allow self-defence not only in defending one's home against break-ins or forcible entry, but also when defending any home – irrespective of ownership and the intruders' manner of entry – or when defending any other property, including movable property (e.g. cars). Another proposal aimed to criminalise manifestations of homosexual orientation. The Prosecutor's Office of the Republic of Bulgaria considered these proposals to violate the Charter.[48] In **Poland**, the Charter was referred to, for instance, in the context of reforming the Constitutional Tribunal: a senator argued that limiting the disciplinary procedure for judges to one single instance was contrary to the Charter.[49]

In the **United Kingdom**, the Charter was referred to in the context of the Counter-Terrorism and Security Act 2015. The discussion centred on how to deal with the Charter, which was considered "more difficult and invasive" than the ECHR, when addressing counter-terrorism measures.[50] **Spanish** parliamentarians raised similar concerns in discussions of a law on the protection of public security.[51]

"[T]he present bill comes after five years of social and financial devastation to safeguard fundamental social needs such as housing, food and energy, as described in the Charter of Fundamental Rights of the European Union."

Source: Alexis Tsipras, Prime Minister, Hellenic Parliament, debate on adopting immediate measures to address the humanitarian crisis, Minutes of Plenary Session, 16th period, 1st Convention, 12th Session, 18 March 2015, p. 150

1.3. National policy measures and training: lack of initiatives

In addition to implementing the Charter where legally obliged to do so, EU Member States can also help fulfil the Charter's potential – and strengthen fundamental rights more generally – by increasing awareness about the instrument. According to Article 51 of the Charter, the EU and the Member States are required to do more than simply respect the Charter's rights: they are under an obligation to actively "promote the application" of its rights and principles. Member States can play an important role in this regard by fostering awareness of the Charter and proactively designing policy documents referring to the instrument.

1.3.1. Policies referring to the Charter

Policy documents and initiatives referring to the Charter were identified for close to half (13) of the Member States. However, many of these are very limited in scope and intensity. Just as in previous years, a national policy dedicated specifically to proactively promoting the Charter and its rights could not be identified.

Some major planning documents do, however, refer to the Charter. In **Greece**, a Human Rights Action Plan[52] was introduced for 2014–2020, aiming to protect human rights in a clear, coherent, and systematic manner. It makes repeated mention of the Charter throughout its description of existing protected rights. Another example is **Slovenia**, where the proposed Healthcare Plan 2015–2025 also refers to the Charter.[53]

The Charter is more commonly used in targeted policies that seek to promote populations protected by a specific article in the Charter. For example, policies introduced in **Bulgaria** refer to the integration of persons with disabilities (Article 26).

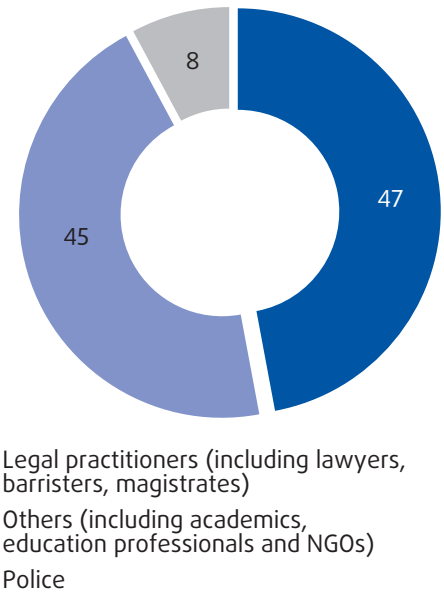
1.3.2. Training related to the Charter

Fifty-one Charter-relevant training programmes in 23 EU Member States were identified in 2015. The Charter was usually not the main focus of such training. In fact, only 10 of the identified programmes focused on the Charter. For instance, in **Denmark**, four Charter-specific seminars were organised by the information office of the European Commission and European Parliament in cooperation with other partners.

The Charter is mostly presented and discussed alongside the ECHR or EU legislation. It is included in training on fundamental rights in general, on fundamental rights in the EU, or sometimes on one specific fundamental right. In **Austria**, the police training course 'Human rights – police: Protection or threat' looked at the Charter in combination with other instruments, such as the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

A quarter of the courses analysed targeted academia, and slightly less than a quarter at least partly addressed magistrates. Lawyers, police officers, and teachers were also among the target groups. Teachers are important multipliers because they can raise awareness of the Charter among the general population. To this effect, in **Slovenia**, for instance, a course for education workers addressed teaching about privacy rights and personal data protection in primary and middle schools. In **Italy,** the Italian Society for International Organisations and the Education Ministry organised a course for school teachers entitled 'Teaching human rights'. The training included a presentation of the main international and European instruments for protecting fundamental rights, including the Charter.

Figure 1.6: Training related to the Charter in 2015, by target audience (%)



Note: *Based on 51 trainings held in 23 EU Member States in 2015. Member States where no 2015 trainings were reported and hence not included: the Czech Republic, Finland, Malta, Sweden and the United Kingdom.*

Source: *FRA, 2015 (including data provided by NLOs)*

FRA opinions

According to the Court of Justice of the European Union (CJEU) case law, the EU Charter of Fundamental Rights is binding on EU Member States when acting within the scope of EU law. National courts continued in 2015 to refer to the Charter without a reasoned argument about why it applies in the specific circumstances of the case; this tendency confirms FRA findings of previous years. Sometimes, courts invoked the Charter in cases falling outside the scope of EU law. There are, nonetheless, also rare cases where courts analysed the Charter's added value in detail.

FRA opinion

To increase the use of the EU Charter of Fundamental Rights in EU Member States and foster a more uniform use across them, it is FRA's opinion that the EU and its Member States could encourage greater information exchange on experiences and approaches between judges and courts within the Member States but also across national borders, making best use of existing funding opportunities such as under the Justice programme. This would contribute to a more consistent application of the Charter.

According to Article 51 (field of application) of the EU Charter of Fundamental Rights, any national legislation implementing EU law has to conform to the Charter. The Charter's role remained, however, limited in the legislative processes at national level: it is not an explicit and regular element in the procedures applied for scrutinising the legality or assessing the impact of upcoming legislation, whereas national human rights instruments are systematically included in such procedures.

FRA opinion

It is FRA's opinion that national courts when adjudicating, as well as governments and/or parliaments when assessing the impact and legality of draft legislation, could consider a more consistent 'Article 51 (field of application) screening' to assess at an early stage whether a judicial case or a legislative file raises questions under the EU Charter of Fundamental Rights. The development of standardised handbooks on practical steps to check the Charter's applicability – so far only in very few Member States the case – could provide legal practitioners with a tool to efficiently assess the Charter's relevance in a case or legislative file.

Under Article 51 of the EU Charter of Fundamental Rights, EU Member States are under the obligation to respect and observe the principles and rights laid down in the Charter, while they are also obliged to actively "promote" the application of these principles and rights. In light of this, one would expect more policies promoting the Charter and its rights at national level. Such policies as well as Charter-related training activities are limited in quantity and scope, as 2015 FRA findings show. Since less than half of the trainings address legal practitioners, there is a need to better acquaint them with the Charter.

FRA opinion

To strengthen respect for fundamental rights guaranteed by the EU Charter of Fundamental Rights, it is FRA's opinion that EU Member States should complement their efforts with more proactive policy initiatives. This could include a pronounced emphasis on mainstreaming Charter obligations in EU-relevant legislative files. It could also include dedicated policymaking to promote awareness of the Charter rights among target groups; this should include targeted training modules in the relevant curricula for national judges and other legal practitioners. As was stressed in 2014, it is advisable to embed training on the Charter in the wider fundamental rights framework including the ECHR and the case law of the European Court of Human Rights (ECtHR).

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