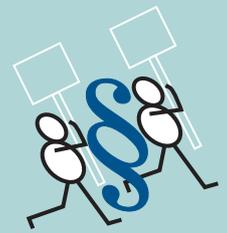


The Charter of Fundamental Rights as a Living Instrument



Guidelines for Civil Society



The European Charter of Fundamental Rights as a Living Instrument

Guidelines for Civil Society

Editors:

**Łukasz Bojarski, Jane A. Hofbauer,
Natalia Mileszyk**

Rome-Warsaw-Vienna

2014

This publication has been produced within the project
'Making the CFREU a Living Instrument'
(JUST/2012/FRAC/AG/2705), co-funded by the
European Commission.

The contents of this publication are the sole responsibility of the
listed authors and can in no way be taken to reflect the views of the
European Commission.

Parts of this publication are based on:
Bojarski/Schindlauer/Wladasch et al., The European Charter of
Fundamental Rights as a Living Instrument – Manual, 2014.

© 2014

This project is co-funded by the European Union



Table of Contents

5	Chapter 1: Introduction to Project and Guidelines
7	Chapter 2: The Charter of Fundamental Rights of the European Union – An EU Bill of Rights
10	Chapter 3: History and Rights Contained in the EU Charter of Fundamental Rights
14	Chapter 4: The EU Charter of Fundamental Rights – Overview
14	Dignity
15	Freedoms
16	Equality
17	Solidarity
19	Citizens’ Rights
20	Justice
21	General Provisions Governing the Interpretation and Application of the Charter
25	Chapter 5: Application of the Charter – Examples
25	Strategic Litigation
27	Litigation – Amicus Curiae Brief (Opinion of the ‘Friend of the Court’)
28	Other Litigation Activities
29	Advocacy Activities
29	Awareness Raising
30	Education
31	Monitoring
32	Research
33	Cooperation of NGOs with the Fundamental Rights Agency (FRA)
36	Partner Institutions

Introduction to Project and Guidelines

Chapter 1

The Charter of Fundamental Rights of the European Union (CFR) has become the most recent and most visible sign of the European Union's efforts to protect and promote basic human rights. It constitutes a comprehensive approach to civil, political, social, economic and cultural rights, and addresses both EU institutions and bodies as well as the member states of the EU when they are implementing EU legislation. This wide scope of application is however still met with certain difficulties of effective enforcement. Legal professionals and other stakeholders are still learning to assess the role of the Charter of Fundamental Rights and how to best guarantee its full effect.

This project '**Making the EU Charter of Fundamental Rights a Living Instrument**', financed by the European Commission, therefore aims at overcoming these difficulties and clarifying the Charter's relevance at the national level as well as for EU legislation. For this purpose, methodologies have been developed and compiled on how to transfer the content of the Charter to legal professionals as well as NGOs, trade unions or other stakeholders and help them identify areas where application of certain provisions of the CFR raises the standard of protection and brings added value.

This has been done on the basis of a substantial analysis of existing literature, legislation and case law on the CFR, conducting a series of interviews as well as organizing and carrying out training seminars for judges, lawyers, public authorities, NGOs etc. Focus has been laid on social rights. This corresponds with a recent opinion by the European Economic and Social Committee that the development of the social dimension of the internal market is just at its start. In addition, a training manual how to educate judges, lawyers and other legal professionals on how to use the CFR has been compiled on the basis of a series of pilot trainings held in Austria, Croatia, Italy and Poland.

These **Guidelines 'The Charter of Fundamental Rights as a Living Instrument – Guidelines for Civil Society'** similarly aim to provide information to those who assist persons and groups affected by human rights violations. This is therefore particularly addressed to:

- NGOs,
- trade unions,
- other civil society organizations, and
- the wider public.

The Guidelines contain a broad overview over:

- the history and coming-into being of the CFR,
- the role it plays in the EU,
- its content and value.

Moreover, core emphasis is laid on providing exemplary cases where the invocation of the CFR was successful.

We hope that you will find the Guidelines useful and interesting, whether as a reader or a trainer. Let's make the Charter of Fundamental Rights a living instrument together!

The Charter of Fundamental Rights of the European Union – An EU Bill of Rights

In 1948, the **Universal Declaration of Human Rights** was passed at the United Nations. To date, it symbolizes the foundation of modern human rights law, constituting the basis for many international and regional human rights treaties and instruments.

At the 50th anniversary of the Universal Declaration of Human Rights, an expert group on fundamental rights appointed by the European Commission presented their report ‘Affirming fundamental rights in the European Union’¹, calling for a comprehensive, visible and justiciable approach to human rights ‘to make their overriding importance and relevance more visible to the Union’s citizens.’²

Conceptualized as a ‘European Charter of Human Rights’, drafting of the Charter began in 1999, primarily building on fundamental rights protection already inherent in the legal systems of the EU member states and the EU. The aim of the Charter was to draft a single document containing all those rights which had developed over the years in the Court of Justice of the European Union (CJEU) case law, in addition to those which are contained in the common constitutional traditions of EU member states and which were included into international instruments particularly relevant to the EU region.

Finally, in 2000, the **Charter of Fundamental Rights of the European Union** was adopted and treated as guidelines in the area of human rights protection. Since then, it has not only become an instrument for individuals to protect their human rights but also an opportunity for the EU to portray the role it plays with regard to the protection and promotion of human rights and their enforcement. As a response to the EU’s growing public authority, it is therefore of paramount importance that human rights have become legally enforceable against its institutions and bodies tasked with elements of public power. Hence, the Charter became legally binding on 1 December 2009. The institutions and bodies of the EU as well as the EU’s member states in implementation of EU law are consequently obliged to secure the rights and freedoms contained in the Charter.

Verica Trstenjak,
University of Vienna, former Advocate
General at the CJEU (2006-2012)

As concerns the fundamental rights of European citizens, the Charter of Fundamental Rights of the European Union is sort of a European constitution. Its relevance continues to increase as it not only protects the classical fundamental rights but also those of the 21st century. As an example, especially the right to privacy is essential in today’s information era.

Moreover, its practical relevance is already evident as all Union citizens can rely on the Charter in addition to their national constitutions.

Charter of Fundamental Rights of the European Union – factsheet³

When was the Charter proclaimed?	The Charter was proclaimed on 7 December 2000 at the Nice European Council, by the European Parliament, the European Commission and by the EU member states, comprising the European Council. Since then it has been treated as guidelines in the area of human rights protection.
Since when is the Charter legally binding?	The Charter is legally binding since 1 December 2009 – The institutions and bodies of the EU as well as the EU’s member states in implementation of EU law are obliged to secure the rights and freedoms from the Charter.
What is the Charter’s prime objective?	The Charter’s prime objective is to make rights more visible .
What is the structure and content of the Charter?	The Charter comprises seven chapters and 54 Articles . Particular rights can be found in six substantive chapters of the Charter – dignity, freedoms, equality, solidarity, citizens’ rights and justice . The last chapter deals with the interpretation and application of the Charter.
What are the sources of inspiration for the rights enshrined in the Charter?	The Charter reflects rights guaranteed in the European Convention on Human Rights , the European Social Charter , the case-law of the European Court of Justice, pre-existing provisions of European Union law and the shared constitutional traditions of all member states.
Who is bound by the Charter’s provisions?	The Charter applies to the EU institutions (European Commission, European Parliament, European Council, the Council, the Court of Justice of the European Union, European Court of Auditors and European Central Bank) and bodies . The Charter also applies to all 28 EU member states , but only when they are acting within the scope of EU law (for example implementing EU law). While this is still subject to some debate, this has been understood broadly and covers those situations which are ‘within the scope of EU law’.
How many people are covered by the Charter?	As the Charter is legally binding in all EU member states, every individual in the EU is protected by its provisions. This means that the Charter is a guarantee of respect of fundamental rights of about 505 mln people .

Who is entitled to benefit from the rights guaranteed in the Charter?

Usually ‘the individual’ is the one entitled by the provisions of the Charter (‘every one’, ‘no one’). Some fundamental rights can only be applied to a specific category of entitled subjects, such as employees or EU citizens. All rights and freedoms undoubtedly refer to the protection of natural persons, but there are rights that can be invoked also by a legal person, including non-governmental organizations (such as for instance respect to private life, home and communication; freedom to conduct a business; right to property).

How can the Charter be used by individuals or organizations?

The Charter can be used as a base of a fundamental rights complaint in front of national courts or through preliminary rulings come to the Court of Justice of the European Union, for disputes on matters based on a law or policy that has already been created, or the way that this is implemented by the EU or a member state, which breaches human rights standards. Moreover, the Charter is an effective tool in various forms of human rights activism, from advocacy to research.

How may the Court of Justice of the European Union refer to the Charter?

The Charter has become a legal tool of a great importance in the jurisprudence of the Court of Justice of the European Union, being increasingly referred to in its decisions. The number of decisions quoting the Charter in their reasoning has increased from 43 in 2011, 87 in 2012, to 114 in 2013.

Why is the Charter such an exceptional document, different from other human rights international legal instruments?

The Charter comprehensively covers civil, political, social, economic and cultural rights, so the scope of the document is very broad. The Charter also introduces some very progressive rights, such as right to good administration or guarantees on bioethics. This is also the first human rights instrument that is binding for EU institutions.

Where can more information on the Charter be found?

The Fundamental Rights Agency (www.fra.europa.eu) prepares reports and manuals on the Charter and various rights. Moreover, the European Commission issues annual reports on the application of the EU Charter of Fundamental Rights – these function as useful sources of data and examples. Other sources are recommended at the end of the guidelines.

Notes:

- 1 ‘Affirming fundamental rights in the European Union - Time to act’, February 1999.
- 2 Cologne Presidency Conclusions, 3-4 June 1999, Annex IV.
- 3 Prepared on the basis of <http://www.eucharter.org> and <http://ec.europa.eu/justice/fundamental-rights/charter/> (last visited 8 August 2014).

History and Rights Contained in the EU Charter of Fundamental Rights

Though the original treaties did not contain any provisions on basic human rights, the EU has long regarded them as enshrined in the general principles of Community law.⁴ Since the 1970s, the EU has questioned the role it should play with regard to human rights, soon finding that by inference from its member states they constituted part of its identity. However, it was until the preamble of the 1986 Single European Act and later the 1992 Maastricht Treaty on European Union that human rights were given formal recognition in the treaty framework.

Martine Reicherts,
EU Justice Commissioner

The Charter of Fundamental Rights has been applied across all areas of EU activity, and proposals to safeguard the rights of citizens in criminal proceedings, the protection of personal data and gender equality in public companies have underlined the EU's commitment to its citizens. [...] Our fundamental rights and values are precious. And they are not a given – they need to be protected and defended, every day.⁵

In 2000, after a one-year drafting phase, the Charter of Fundamental Rights of the European Union (CFR) was adopted in December 2000. Due to the failed European Constitution Project, it did not become legally binding until the entry into force of the Treaty of Lisbon on 1 December 2009.

Since then, it has become an integral part of the EU and now enjoys the same legal value as the Treaties – Article 6(1) of the Treaty on European Union (TEU). The Charter contains a mix of rights and principles which have different consequences when it comes to their justiciability. It not only includes the rights contained in the European Convention on Human Rights but also an extensive catalogue of economic and social rights, some of which most notably stem from the European Social Charter, as well as even 'new' human rights (*e.g.* data protection, guarantees on bioethics).

As the preamble states:

*'Conscious of its spiritual and moral heritage, the Union is founded on the **indivisible, universal values of human dignity, freedom, equality and solidarity**; it is based on the principles of **democracy and the rule of law**. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.'*

In light of this, the rights contained in the CFR are divided into six Chapters, reflective of six fundamental values: dignity (Articles 1-5), freedoms (Articles 6-19), equality (Articles 20-26), solidarity rights (Articles 27-38), citizens' rights (Articles 39-46) and justice (Articles

47-50). A final Chapter is dedicated to general provisions on the interpretation and application of the CFR as well as its relationship with national constitutional law and the European Convention on Human Rights (Articles 51-54).

The ambitious project to include a comprehensive overview of all three generations of human rights and constitute a document legally specific enough to apply but open enough to evolve ‘in the light of changes in society, social progress and scientific and technological developments’⁶ has resulted in significant impacts in a number of fields.⁷ Recognized as the ‘common values’ of the ‘peoples of Europe’ (preamble), the Charter stands as a unified and visible signal for fundamental rights protection. Additionally, even though not necessarily always discernible from the formulation of the provisions, the incorporation of new rights, such as the right of data protection, and methods of interpretation shall ensure that also new concerns can be brought within the ambit of the Charter.

**Romano Prodi,
EU Commission President, 1999-2004**

By proclaiming the Charter of Fundamental Rights, the European Union institutions have committed themselves to respecting the Charter in everything they do and in every policy they promote.

Notes:

4 C-29/69, *Stauder*, Judgment of 12 November 1969.

5 Statement made on 18 July 2014, available at http://europa.eu/rapid/press-release_STATEMENT-14-228_en.htm (last visited 15 August 2014).

6 Preamblular para. 4.

7 T. Kerikmäe (ed.), *Protecting Human Rights in the EU – Controversies and Challenges of the Charter of Fundamental Rights*, Springer: Berlin 2014, p. 1.

Table 1: The Charter of Fundamental Rights – All Rights at One Glance

Dignity	Freedoms	Equality
<p>➔ Right to:</p> <ul style="list-style-type: none"> • Life • Protection of dignity • Respect for one’s physical and mental integrity • Free and informed consent 	<p>⤴ Freedom of:</p> <ul style="list-style-type: none"> • Expression, information • Thought, conscience, religion • Art and science • Association • Assembly • To conduct a business 	<p>⌚ Rules of:</p> <ul style="list-style-type: none"> • Equality of all before the law • Equality of women and men • Cultural, religious and language diversity
<p>⊗ Prohibition of:</p> <ul style="list-style-type: none"> • Killings/death penalty • Torture • Degrading and inhumane treatment • Organ trafficking • Cloning • Eugenic practices • Slavery, forced labor • Human trafficking 	<p>➔ Right to:</p> <ul style="list-style-type: none"> • Liberty and protection from arbitrary detention • Marry • Found a family • Respect for private and family life • Education • Protection of personal data • Choose an occupation and engage in work • Property and bequeath • Protection of intellectual property • Asylum for refugees • Protection against collective expulsion • Protection against extradition to a state that violates fundamental human rights 	<p>⊗ Prohibition of discrimination (right to equal treatment) based on:</p> <ul style="list-style-type: none"> • Sex • Race and colour • Ethnic or social origin • Genetic features • Language • Religion or belief • Political or any other opinion • Membership of a national minority • Property • Birth • Disability • Age • Sexual orientation <p>⌚ Rules of respect of the rights of:</p> <ul style="list-style-type: none"> • Children • Elderly • Persons with disabilities

Solidarity

➔ **Right of the workers to:**

- Information, consultation
- Collective bargaining and action
- Access to placement services
- Fair and just working conditions
- Protection in the event of unjustified dismissal
- Protection of young people at work

⊗ **Prohibition of child labor**

⌚ **Rules of:**

- Reconciliation of family and professional life
- Protection of family – legal, economic and social

➔ **Right to:**

- Protection during maternity
- Maternal and paternal leave
- Social security benefits
- Social and housing assistance
- Access to services of general economic interest

⌚ **Rules of protection of:**

- Health
- Consumers
- Environment

Citizens' Rights

➔ **Right to:**

- Vote and to stand as a candidate at elections to the European Parliament
- Vote and to stand as a candidate at municipal elections
- Consular protection
- Petition
- Refer to the European Ombudsman
- Access to documents
- Good administration, which:
 - is impartial
 - is fair
 - hears the applicant
 - gives reasons to its decisions
- Have the Union make good any damage caused by its institutions

⤴ **Freedom of:**

- Movement
- Residence

Justice

➔ **Right to:**

- Effective remedy before the court
- Independent and impartial tribunal previously established by law
- Have one's case fairly and publically heard, within a reasonable time
- Be advised and have legal aid
- Defence
- Presumption of innocence

⊗ **Prohibition of:**

- Being held guilty of any criminal offence not prescribed by law at the time when it was committed
- Disproportionate penalties
- Being tried or punished twice for the same criminal offence

The EU Charter of Fundamental Rights – Overview

Dignity

Chapter I of the CFR is entitled ‘Dignity’. Consequently, it contains those rights which constitute the core protection standard for the effective guarantee of any other right. These include the right to human dignity (Article 1), the right to life (Article 2), the right to the integrity of the person (Article 3), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), and the prohibition of slavery and forced labour (Article 5).

In particular the right to integrity of the person (Article 3) deserves further mentioning as it ‘pervades all areas of EU law and policy’.⁸ In *Netherlands v. European Parliament and Council*, the CJEU therefore found that ‘in its review of the compatibility of acts of the institutions with the general principles of Community law, [it had] to ensure that the fundamental right to human dignity and integrity is ensured.’⁹

This fundamental value is complemented by the incorporation of progressive elements in its paragraph 2, responding to medical and scientific developments. Article 3 reads:



Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

It therefore explicitly addresses the issue of personal integrity in the context of biomedicine. In comparison, the provisions of the ECHR only implicitly cover this issue as a part of the right to private life.

Freedoms

Chapter II of the CFR contains traditional civil and political rights, socio-economic rights as well as ‘new generation’ rights. Regarding the civil and political rights, it includes *inter alia* the right to liberty and security (Article 6), the respect for private and family life (Article 7), the freedom of thought, conscience and religion (Article 10), the freedom of expression and information (Article 11), the freedom of assembly and of association, the right to property (Article 17) and the right to asylum (Article 18). The socio-economic focus is visible in the right to education (Article 14), the freedom to choose an occupation and the right to engage in work (Article 15), and the freedom to conduct a business (Article 16). And finally, it contains the right to the protection of personal data (Article 8), a balance between the right to privacy and the right to freedom of expression and information.

Article 15 CFR is particularly representative of the central values of the internal market:

Article 15. Freedom to choose an occupation and right to engage in work



1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

It has long been reflected in case law of the CJEU, and reinforces the freedom of EU citizens to be economically active throughout the EU.¹⁰

Also the provision regarding the right to property reflects a fundamental right common to all member states’ constitutions. There are numerous examples of EU legislation related to property, *e.g.*, in the field of unbundling, access to the network of competitors, or the freezing of funds of persons/entities suspected of terrorism.¹¹

§

Article 17. Right to Property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
 2. Intellectual property shall be protected.
-

In particular the explicit mentioning of the protection of intellectual property is new, signaling its growing importance. But also the express inclusion of the requirement that a loss of property must be ‘subject to fair compensation being paid in good time’ (while the ECHR only refers to ‘general principles of international law’) is an opportunity for the CJEU to generally develop a more precise and refined jurisprudence with regard to the right to property.

Equality

The third Chapter of the CFR is dedicated to traditional equality rights, ranging from equality before the law (Article 20), to non-discrimination (Article 21), cultural, religious and linguistic diversity (Article 22), and equality between women and men (Article 23). It also contains a number of social rights, namely the rights of the child (Article 24) and of the elderly (Article 25), and finally, the integration of persons with disabilities (Article 26).

Though some of the provisions of Chapter III are formulated broadly, it is important to call into attention that they do not extend the field of application of EU law. This is emphasized not only by the Explanations to the CFR, but also in the text of the pertinent provisions. For example, Article 21 CFR is formulated:

§

Article 21. Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.
-

Despite this emphasis on not extending EU competences, Article 21 CFR still is a significant signal against status discrimination, including within a non-exhaustive list of grounds of discrimination a wide range of ‘new’ grounds such as genetic features, social origin, political opinion or property status. Note however that these grounds are not listed in Article 19 TFEU which confers powers on the EU to legislate to combat discrimination based on ‘sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’. Nevertheless, in accordance with *Fransson*, the ‘applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter’¹², resulting in a wide range of situations which could fall within the scope of Article 21 CFR.¹³

Other notable provisions are:

Article 25. The rights of the elderly



The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26. Integration of persons with disabilities



The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Solidarity

Chapter IV of the CFR constitutes the most contested part of the Charter, covering a number of social rights and principles. The drafting phase proved particularly difficult, until a threefold-compromise could be made. Firstly, the preamble of the CFR contains an explicit mentioning of solidarity as a universal value of the Union. Secondly, it was agreed to only include those social rights which were uncontested by the member states. These were, however, to be formulated in a restrictive and open manner. Thirdly, to avoid the CFR to be hampered by this in future and enable it to evolve according to developments in the fields, Article 53 CFR provides that the level of protection recognized by Union law, international law, international agreements and by member states’ constitutions may not be restricted through interpretation of the Charter. Together, this creates a dynamic-evolutive character of the rights contained in the CFR.

Chapter IV includes *inter alia* the right of collective bargaining and action (Article 28), the right of access to placement services (Article 29), protection in the event of unjustified dismissal (Article 30), fair

and just working conditions (Article 31), social security and social assistance (Article 34), health care (Article 35), environmental protection (Article 37) and consumer protection (Article 38).

Some of the rights contained in Chapter IV have both individual as well as collective dimensions. For example, Article 28 CFR sets out the right to collective bargaining and collective measures, including strike (as well as lock outs by employers) of both workers/employers as well as their respective organisations.¹⁴ It reads:



Article 28. Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

It has been criticized that Article 28 CFR only sums up existing rights and includes a special reference to limits set by Union law as well as national law and practice. On this basis, it has been recognized that the exercise of collective action (strike) can interfere with the freedoms guaranteed by the TFEU.¹⁵ In such circumstances, justification and proportionality become key in the assessment of the legality of such an action.

Other provisions of the Chapter are only conceptualized as principles, which can result in some difficulties in identifying direct claims for positive action by EU institutions or member states authorities. The Explanations to the CFR recall in this context that while subjective rights must be respected by EU institutions, bodies and member states, principles are only justiciable if they have been implemented by legislative and executive acts¹⁶ An example can be seen in Article 34 CFR, which states that

[t]he Union recognizes and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

In such circumstances, it is important to examine implementation measures in EU and national law.

Another example is Article 38 CFR (consumer protection) which lays down the promotion of a high level of consumer protection as a task of the EU, stipulating that ‘Union policies shall ensure a high level of consumer protection.’

Though criticism has been voiced that some of the social rights were not phrased in such strong terms as many other rights contained in the Charter, the symbolic importance of including them into the same document cannot be underestimated. In particular, it provides evidence that the economic objectives of the internal market must not be followed without consideration for the social dimension.

Citizens' Rights

The fifth Chapter primarily addresses rights guaranteed to citizens of the member states, *i.e.* EU citizens, namely the right to vote and to stand as a candidate at elections to the European Parliament (Article 39), the right to vote and stand as a candidate at municipal elections (Article 40), and the right to diplomatic and consular protection (Article 46).

Other rights of the Chapter are directed towards *EU citizens as well as 'any natural or legal person residing or having its registered office in a Member State'*, such as the right of access to documents (Article 42), the right of referral to the European Ombudsman (Article 43) and the right to petition the European Parliament (Article 44). The freedom of movement and of residence (Article 45) is primarily applicable to EU citizens but may be extended to nationals of third countries legally resident in a member state.

Finally, Chapter V also includes the right to good administration (Article 41), which is addressed to every person, thus not only EU citizens or residents.

Article 41. Right to good administration



1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
 2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.
-

The comprehensive drafting of a right to good administration at EU level is unique, though the main contents of the right have been long recognized by the case law of the CJEU as a general principle of law.

Justice

Chapter VI of the CFR is concerned with the rights of individuals in relation to the judiciary. They are addressed to everyone and not only EU citizens. It contains the right to an effective remedy and to a fair trial (Article 47), the principle of presumption of innocence and right to defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), and the right not to be tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*, Article 50).

Article 47 CFR is particularly important, founding the protections offered by the Charter on the rule of law. It states:



Article 47. Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Within one provision, two distinct rights are guaranteed, the right to an effective remedy and to a fair trial. It extends Article 6 ECHR's right to a fair trial in that it applies to everyone whose 'rights and freedoms' guaranteed by the law of the Union are violated, as opposed to Article 6's applicability to 'civil rights and obligations'. It also explicitly grants recognition to the right to legal aid, previously merely recognized in the case law of the ECtHR but not expressed in the provision itself.

General Provisions Governing the Interpretation and Application of the Charter

The final Chapter (VII) contains a number of provisions which apply to all rights, freedoms and principles contained in the Charter. They serve as important guidance in the interpretation and application of the CFR. They also regulate the relationship of the Charter to other international and regional human rights instruments, in particular the ECHR.

How fundamental rights might be raised

National law only (no EU law)	National law with an EU element	EU law
National fundamental rights provisions before national courts	National fundamental rights provisions and CFR before national courts (Art. 267 preliminary reference possible)	CFR raised in front of the General Court or CJEU
ECHR raised before the ECtHR	ECHR raised in front of ECtHR on national discretion and on EU law if EU courts have had no chance of adjudicating or if protection in EU law is manifestly deficient	ECHR raised in front of ECtHR if EU courts have no chance of adjudicating on validity of EU law, or protection in EU law is manifestly deficient

Adapted from: C. Barnard/S. Peers (eds.), *European Union Law* (2014), p. 253.

Article 51 CFR is core to the understanding of the importance and functioning of the Charter. It defines and at the same time limits the field of application.

Article 51 – Field of application



1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Accordingly, the Charter not only is addressed to the EU and its institutions (as set up by primary and secondary EU legislation, *e.g.*, Frontex, Europol, European Court of Auditors, European Central Bank), and not only to the EU's member states, but to both. The Charter has direct effect in member states and – if EU law is concerned – is not dependent on states implementing its provisions. It, however, 'does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union'. With regard to member states, the Charter is applicable 'when they are implementing Union law'. This has been understood broadly and covers those situations which are 'within the scope of EU law' (C-390/12, *Pfleger*, paras. 33ff.) Hence, we deal with 'implementing EU law' when a member state's legislative activity and judicial and administrative practices fulfill obligations under EU law.

An important distinction is made between rights and principles, which call for different treatment. Article 51 states that the parties are to 'respect the rights, [and] observe the principles'.

The difference is explained in Article 52(5) CFR which emphasizes that:

The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

Hence, principles only become relevant where they have been legislatively enacted and do not by themselves give rise to direct claims for positive action. This is reflective of the fact that economic, social and cultural rights have long battled the presumption that they are non-justiciable and instead only programmatic formulations to be realized progressively. The values expressed by such principles were common to the whole Community, but the implementation was left to particular member states (or the EU where its competences were concerned). Therefore, to allege the violation of a 'principle' in front of any court it is necessary to invoke certain legislation implementing the principle (*i.e.*, principles are not directly enforceable).

The European Union recognizes and respects the following principles: the right of elderly people to lead a life of dignity and independence, and to participate in social and cultural life; the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community; the right to social security benefits and

social services providing protection in the following cases: maternity, illness, industrial accident, dependency and old age, and in the case of loss of employment; the right to social and housing assistance; and the right of access to services of general economic interest in order to promote the social and territorial cohesion of the Union.

Article 52 CFR also provides guidance on the relationship between the Charter and the ECHR, and between the Charter and common national constitutional traditions. As the to the first, the Charter stipulates that where it ‘contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention.’ In addition, ‘[t]his provision shall not prevent Union law providing more extensive protection.’ Thus, EU law can only set higher but not lower protection standards. With regard to ‘constitutional traditions common to the Member States’, fundamental rights resulting therefrom ‘shall be interpreted in harmony with those traditions.’

Article 53 CFR (level of protection) contains a common human rights treaty clause, stating that the Charter shall not ‘be interpreted as restricting or adversely affecting human rights and fundamental freedoms’ as recognized in other international (or EU) agreements or domestic constitutions.

Notes:

- 8** S. Michalowski, 'Article 3', in S. Peers/T. Hervey/J. Kenner/A. Ward (eds.), *The EU Charter of Fundamental Rights – A Commentary*, Hart Publishing: Oxford and Portland 2014, p. 41.
- 9** C-377/98, *Netherlands v. European Parliament and Council*, Judgment of 9 October 2001, para. 70.
- 10** As the Explanation point out, especially *Nold*, *Hauer* and *Keller* are pertinent: C-4/73, *Nold*, 14 May 1974; C-44/79, *Hauer*, 13 December 1979; C-234/85, *Keller*, 8 October 1986.
- 11** F. Wollenschläger, 'Article 17' in S. Peers/T. Hervey/J. Kenner/A. Ward (eds.), *The EU Charter of Fundamental Rights – A Commentary*, Hart Publishing: Oxford and Portland 2014, p. 467.
- 12** C-617/10, *Fransson*, Judgment of 26 February 2013, para. 21.
- 13** C. Kilpatrick, 'Article 21', in S. Peers/T. Hervey/J. Kenner/A. Ward (eds.), *The EU Charter of Fundamental Rights – A Commentary*, Hart Publishing: Oxford and Portland 2014, p. 581.
- 14** B. Rudolf, 'Artikel 28', in J. Meyer (ed.), *Charta der Grundrecht der Europäischen Union*, Nomos: Baden-Badem 2014, p. 482.
- 15** C. Barnard, 'Article 28', in S. Peers/T. Hervey/J. Kenner/A. Ward (eds.), *The EU Charter of Fundamental Rights – A Commentary*, Hart Publishing: Oxford and Portland 2014, p. 787, in particular referring to C-438/05, *Viking*, Judgment of 11 December 2007, and C-341/05, *Laval*, Judgment of 18 December 2007.
- 16** Explanations relating to the Charter of Fundamental Rights. C303/17, regarding Article 52(5).

Application of the Charter – Examples

The Charter of Fundamental Rights, as a relatively new legal instrument (binding since 1 December 2009) is still a challenge for Non-Governmental Organizations (NGOs) in Europe. There are however already positive examples of organizations that use the Charter in their activities related to litigation, legislation and policy making process. We hope that these cases and our comments will help make the Charter a more living instrument, useful to various kinds of NGO activities. As underlined by several experts and NGO representatives throughout these guidelines, the Charter can and should be used to shape public policy and the general framework of human rights protection in the European Union and NGOs engagement can only facilitate such changes.

It is worth emphasizing that the Charter can be used not only in NGO work on certain social issues or individual cases, but some rights guaranteed in the Charter are directly applicable to the NGOs themselves (and other legal persons). Such rights include *inter alia* the respect to private life, home and communication; freedom to conduct a business; and the right to property which can be invoked by the organization to protect its rights.

This part contains various types of NGOs activities where the Charter can be used, with the examples how NGOs have already done this when possible. The comments on various types of activities are based on the experience of NGOs in using various human rights documents – many of those experiences can be used accordingly in the case of the Charter. We believe that NGOs have a great role to play in encouraging various EU and national institutions to act in accordance with human rights standards provided in the Charter.

Strategic Litigation

An NGO can take carefully selected cases to a court in order to shape law, practice or public awareness – such an action is called strategic litigation. NGOs do not only aim at obtaining justice for a certain individual bringing a claim, but also at influencing rights of others who might potentially find themselves in a similar or comparable situation. The effective strategic litigation should result in changes by using selected individual cases of human rights violations – the aim is to create legal precedents.

The Charter of Fundamental Rights can be used in strategic litigation in two scenarios:

1. The human rights violation complaint can be based only on Charter provisions in situations when the right is not guaranteed by any other binding and enforceable document, as in a case of right to good administration;
2. The Charter can be used to strengthen human rights violation claims simultaneously with other human rights documents (usually it will be the European Convention on Human Rights).

Krzysztof Śmiszek, Polish Society of Anti-Discrimination Law (Poland)

The Charter of Fundamental Rights is still not a fully discovered and used tool of human rights protection. As an inherent part of primary law of the European Union, the Charter guarantees rights protection, equal treatment and non-discrimination. It is worthwhile to use the Charter as a part of legal argumentation in court proceedings due to the fact that the role of the Charter in the human rights protection system is invaluable. If we use the Charter more frequently in both litigation and legislation processes, the result can be that the EU will prove its role as an organization protecting human rights and fundamental freedoms.

In the case of strategic litigation, it is important to remember that EU institutions are always bound to respect the Charter, whereas EU member states (and their legislative, administrative and judicial bodies) only in cases of 'implementation of EU law'. 'Implementation' should be understood as both the situation when the state acts within the scope of EU law and when the state implements or applies EU legal norms directly.

The matter of enforceability of certain rights is also crucial – not all of them can be used in courts. There are two types of rights and freedoms. The first group of rights and freedoms can be directly invoked in front of the institutions bound by the Charter. The normative content of the second group, however, depends upon legislation at the national or community level. The catalogue of rights directly applicable is coherent with rights included in the European Convention of Human Rights (with some extensions such as bioethical rights).

The second group of rights contains:

- a) rights which refer exclusively to national law (the right to marry and the right to found a family; the right to conscientious objection; access to preventive health care and the right to benefit from medical treatment; freedom to found educational establishments and the right of parents to ensure the education and teaching of their children in conformity with their convictions);
- b) rights which refer to both the law of the EU and national laws and practice (the workers' rights to information and consultation within the undertaking; the right to negotiate and conclude collective agreements and right to take collective actions, including strike actions; protection in the event of unjustified dismissal and the right to social benefit and social privileges).

Traditionally, strategic litigation is a tool used in national judicial proceedings. Nevertheless, an NGO can encourage the national court to ask for a preliminary ruling from the Court of Justice of the European Union in situations where European law (concerning fundamental rights) needs explanation and clarification.

Example

...

The AIRE Centre (<http://www.airecentre.org/>) is a specialist London-based organization whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights. In addition to its work based on the European Convention of Human Rights, 450 people each year receive advice on various aspects of EU law.

One of the strategic litigation cases led by AIRE is *E.B. v. United Kingdom* in front of the European Court of Human Rights.¹⁷ The case concerns a European Arrest Warrant (EAW) which was issued against the applicant, a non-national in the United Kingdom. The applicant has four minor children. The question is whether the EAW may affect family life and if yes, if the warrant should be applicable taking fundamental rights standards into consideration. AIRE claims that any action taken under an EAW is governed by EU law and must be in conformity with fundamental rights principles, including those of the Charter of Fundamental Rights (in this case respect to private and family life).

Litigation – Amicus Curiae Brief (Opinion of the ‘Friend of the Court’)

Amicus Curiae (friend of the court) is an organization (or a single person) that is not a party to a lawsuit, but has a strong interest in the matter, *e.g.*, it/he/she wants to achieve a certain legal change or lead to a certain judgment. Such an organization can petition the court for permission to submit a brief with the intent of providing the court with additional information, data, and knowledge.

The rights provided in the Charter can be used to build or strengthen a brief to various types of courts: national, the Court of Justice of the European Union, the European Court of Human Rights (there are cases, like *Schalk and Kopf v. Austria*¹⁸, where the Strasbourg Court referred to Article 9 of Charter) and other international human rights bodies.

Example

...

ARTICLE 19 (<http://www.article19.org/>) is an international non-governmental organization that designs and promotes laws and policies that protect free expression and advocate for legal reforms. It also actively demands transparency and accountability by testing governments’ transparency practices and access to information provisions, and by campaigning for the disclosure of information of public interest.

The right to freedom of expression, one of the rights guaranteed in the Charter, was one of the legal grounds of Article 19’s *amicus curiae*¹⁹ in the David Miranda case.²⁰ David Miranda is a Brazilian citizen and the spouse of Glenn Greenwald, a journalist who was working for the Guardian newspaper. Some months after an

initial contact made in late 2012, Mr. Greenwald met Edward Snowden, who provided him with encrypted data which had been stolen from the National Security Agency of the United States. Afterwards, in August 2013 at Heathrow airport, his partner (the claimant) was stopped and accused to be 'likely involved in espionage activity which has the potential to act against the interests of UK national security' (Miranda possessed encrypted secret documents from Snowden). He was detained for approximately 9 hours. Article 19 is involved in judicial review proceedings that started shortly afterwards in November 2013.

Other Litigation Activities

The potential role of NGOs in the trial is not limited to the strategic litigation and *amicus curiae* brief. Often organizations as legal person can also initiate the litigation, be part of the proceedings, join the existing proceedings or observe the trial.

The complaint based on or supported by the provisions of the Charter can be brought in front of various bodies, not only judicial. For instance, anyone who believes that there has been a misuse or failure to safeguard their personal data by an EU institution or body can make a complaint to the European Data Protection Supervisor (<https://secure.edps.europa.eu/EDPSWEB/edps/EDPS?lang=en>). The European Parliament's Committee on Petitions can act on a complaint about national authorities failing to implement EU law properly, including failure to respect the rights in the Charter (<http://www.europarl.europa.eu/committees/en/peti/home.html>). The European Ombudsman can investigate wrongdoing by an EU institution or body (<http://www.ombudsman.europa.eu/en/home.faces>).

Example

...

The International Commission of Jurists – ICJ (<http://www.icj.org/>) promotes and protects human rights by using legal expertise of member lawyers in order to develop and strengthen national and international justice systems. The ICJ aims to ensure an effective implementation of international human rights and international humanitarian law. Lawyers working for the Commission are well aware of the Charter and its role.

The Charter was used by the ICJ for instance in its third party intervention in *Suso Musa v. Malta*²¹ in front of the European Court of Human Rights.²² Ibrahim Suso Musa, a Sierra Leone national, entered Malta by boat in April 2011. Upon arrival, he was arrested by the police and detained. Suso Musa complained that his detention was unlawful, that on arrival he was not provided with information regarding the specific reasons for his detention and that he did not have an effective means to have the lawfulness of his detention reviewed. The Charter was used to strengthen claims based on the European Convention of Human Rights and the Court finally recognized alleged violations.

Advocacy Activities

Various types of NGO activities can be understood as advocacy in a meaning of ‘an action directed at changing the policies, positions and programs of any type of institution.’²³ The target groups of advocacy are decisions makers, leaders, policy-makers, and people in a position of influence. There are various levels of advocacy work: local, national, and international. Successful advocacy usually requires time, well planned actions and various activities. The Charter of Fundamental Rights can be a useful legal point of reference, strengthening the claim in advocacy efforts regarding social changes and protection of fundamental rights.

Example

The Belgian organization *La Ligue de Droits de l’Homme* (<http://www.liguedh.be/>) in cooperation with other foreign as well as Greek NGOs sent a letter²⁴ to the President of the European Parliament to draw attention to the problem of the human rights situation in Greece. While in the first half of 2014 the Greek government held the rotating Presidency of the Council of the European Union, the letter documented the wide range of serious violations of the European Charter of Fundamental Rights. The Charter was referred to in a very strong statement: ‘Reading the Charter of Fundamental Rights of the EU, it is hard to find a single article that has not been violated by the Greek government during the last three years, as part of the policies it has implemented against its own people.’

Nedjeljko Marković, Pragma (Croatia)

The Charter of Fundamental Rights of the European Union has been used as an advocacy tool by NGO Pragma, where it served as an argument for improving social standards on the national and EU level.

The need for using the Charter as a tool has grown, not only after the accession of Croatia to the EU, but also during the economic and financial crisis: the Charter is seen as a key document (together with the Social Charter of the Council of Europe) in dealing with social changes brought by the crisis.

Pragma plans to continue its activities in advocating social rights both on the national and EU level (through its membership in the Croatian Anti-Poverty Network, and the European Anti-Poverty Network), where it will direct its activities to informing Croatian citizens on the rights guaranteed by the Charter. It will also target the decision makers, by preventing possible breaches of the Charter at the national level, and proposing ways for possible implementation strategies of certain articles of the Charter.

Awareness Raising

Awareness raising can cover a huge range of activities – anything that involves people understanding, learning or doing something new related to their rights is a part of the process of raising awareness about the need to protect fundamental rights. Awareness raising actions are targeted at a broad, general audience. The ultimate aim is to make people involved more aware of certain human rights issues. It is the goal that matters the most, therefore the tools to achieve this can vary: from cultural to sport events, media campaigns, publications, meetings, and discussions.

Example

Five partner organisations from five EU member states (Czech Republic, Slovenia, Poland, Estonia and Romania)²⁵ co-organized a project called ‘Evening with Ombudsman’ aimed at promoting knowledge about fundamental rights, their violations and possible ways of lodging a complaint. The main component of the

project was the task to organize 70 meetings for people from small cities (up to 20.000 inhabitants) of five countries in which the project took place. Moreover, it also aimed at conducting workshops for representatives of NGOs about protection of human rights. During the project the Charter was widely discussed as well as promoted among individuals and participating NGOs.

Education

Many NGOs put education activities high on their agendas as they claim that this is the first step to change the approach to human rights, both of officials and citizens. Education on human rights has a very significant purpose – in order to be able to fully exercise somebody's rights the knowledge is indispensable. The education on the Charter can be incorporated, or treated separately, in various curriculums for children, students, people who might become victims of violations, as well as professionals like lawyers and other NGOs. The knowledge of the EU Charter of Fundamental Rights is still a challenge across Europe.

Example

...

The Helsinki Foundation for Human Rights (<http://www.hfhr.pl/>) is a leading Polish NGO whose mission is to promote the development of a culture based on the respect of freedom and human rights in Poland and abroad. It uses a wide spectrum of activities, such as litigation, monitoring, and education. The Foundation organized a training on 'How to litigate before the European Court of Justice'. It was not concentrated on the Charter, but the document was referred to in connection with asylum (Article 18 of the Charter).

Example

...

JUSTICE (<http://www.justice.org.uk/>) is a law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. The organization conducted the seminar 'The EU Charter of Fundamental Rights: An essential tool for Scottish practitioners'. This seminar for lawyers focused on the following topics: the EU Charter as a practitioner's tool for rights protection; overview of Charter rights and when they apply; how the Court of Justice of the European Union works with case examples applicable to domestic courts; and how to use the Charter to bolster rights focused arguments in domestic cases.

Monitoring

Various organizations (including watchdogs) monitor many aspects of the EU and member states' activities, such as legislation, court proceedings or administrative activities. Critical monitoring is aimed at alerting the public when NGOs detect actions that go against the public interest or law. NGOs have a different approach to watchdog activity – for many just sounding the alarm is the goal. Others might try to use obtained information in attempts to actively to solve problems.

The Charter of Fundamental Rights can be used as a pattern of control of EU and member states' actions. As a binding legal document it creates certain legal obligations that must be fulfilled. Therefore it is worth to include a fundamental rights perspective into any monitoring activity.

Example

...

The AGE Platform Europe (<http://www.age-platform.eu/>) is a European network of around 165 organizations that deal with people aged 50+. Its work focuses on a wide range of policy areas that have an impact on seniors and retired people. The organization constantly monitors how various institutions, including EU bodies, secure the rights of elderly people – the Charter establishes the pattern of control and the scope of protection. The shadow report on older people's fundamental rights²⁶ – response to the 2010 Report on the Application of the EU Charter of Fundamental Rights – is a good example of monitoring activity where the Charter is referred to.

Example

...

Three Polish human rights organizations, the Helsinki Foundation for Human Rights, Panoptykon and Amnesty International Poland, organized an action called '100 questions to the Polish authorities'. Questions concerned the problem of surveillance revealed by Edward Snowden, in connection with the US programme called PRISM. In three of them, the organizations used the Charter as a general standard of control and asked the Polish Ministry of Foreign Affairs if it took any actions to check whether the United Kingdom violated EU Treaties and the Charter by developing its own surveillance programme, called Tempora.

Research

Dominika Bychawska-Siniarska, The Helsinki Foundation for Human Rights (Poland)

The Charter of Fundamental Rights, due to lack of specific mechanisms for individual complaints, is not as popular among EU citizens as the much older European Convention on Human Rights is. However, the provisions of the Charter may be used by EU citizens before the expanding EU administration. What is most important, the Charter has become a compass for all EU policies.

It is also the basis in the EU's legislative process. In particular, the Charter serves the Commission which possesses the legislative initiative power. Increasingly, the CJEU's judgments rely on the Charter while adjudicating cases concerning the rights of EU citizens.

The Charter has become a point of reference for NGOs conducting European advocacy. Relying on the Charter, the Helsinki Foundation for Human Rights seeks a greater engagement of the Polish Government in proceedings before the CJEU concerning human rights violations. Cooperating with the Fundamental Rights Agency, the Foundation tries to raise awareness about the Charter among Polish courts and ordinary citizens. I believe that the Charter can become a document of reference for a national human rights reporting in the future.

Research is associated by many with purely academic activity, when in fact NGOs usually effectively use research to develop their know-how, build better strategies and strengthen their other actions. Research provides NGO advocacy with substance, data, and new information to help make a case. The Charter provides inspiration for many questions to be asked, especially on the level of protection granted by the Charter and the scope of the implementation.

Example

Human Rights Watch – HRW (<http://www.hrw.org/>) is a human rights NGO working around the globe. Their staff consists of human rights professionals including country experts, lawyers, journalists, and academics of diverse backgrounds and nationalities. Each year, Human Rights Watch publishes more than 100 reports and briefings on human rights conditions in some 90 countries, generating extensive coverage in local and international media.

The Charter is used as a reference document in the organization's activities. HRW is worldwide known for its expert reports covering various issues and countries. The chapter on the European Union in the 2013 world report focuses on the rights provided in the Charter.²⁷ The conclusion was not very optimistic: 'Despite deteriorating rights in Hungary and elsewhere, EU institutions largely failed to live up to the promise of the EU Charter of Fundamental Rights, with the European Council particularly reluctant to hold member states to account for abuse'.

Example

The Helsinki Foundation for Human Rights (<http://www.hfhr.pl/>) is a leading Polish NGO whose mission is to promote the development of a culture based on the respect of freedom and human rights in Poland and abroad. The foundation launched a project, 'Europe of Human Rights', aimed at bringing the work of international human rights organizations to the public of Poland. One of the aspects is looking at the work of the European Union Agency for Fundamental Rights and informing about the reports and studies it conducts.

Cooperation of NGOs with the Fundamental Rights Agency (FRA)

The Fundamental Rights Agency – FRA (<http://fra.europa.eu/en>) was established in 2007 as an EU Agency with the specific task of providing independent, evidence-based advice on fundamental rights. FRA is the successor organization to the former European Monitoring Centre on Racism and Xenophobia (EUMC), but has a far broader mandate to provide evidence-based advice to EU institutions and bodies on a wide range of fundamental rights, in line with the EU Charter of Fundamental Rights. Its aim is to contribute towards ensuring full respect for fundamental rights across the EU. The Agency is based in Vienna.

FRA created the Fundamental Rights Platform (FRP) and invited non-governmental organisations and other civil society institutions in the field of fundamental rights at the national, European or international level to participate in FRP's work. There are several requirements that must be met to become a member of the platform²⁸ such as expertise, experience and capacity with regard to the protection and promotion of fundamental rights and accepting the FRP code of conduct. The Platform meets annually and is a unique forum for civil society organizations to discuss emerging fundamental rights issues in the EU.

Notes:

- 17** ECtHR, *E.B. v. the United Kingdom*, Application No. 63019/10.
- 18** ECtHR, *Schalk and Kopf v. Austria*, Application No. 30141/04, Judgment of 22 November 2011.
- 19** *Amicus curiae* available at http://www.article19.org/data/files/medialibrary/37345/Miranda_Intervention_Art19_EnglishPEN_MLDI.pdf.
- 20** The High Court of Justice Queen's Bench Division Administrative Court UK, Claim No. CO/11732/2013.
- 21** Written Submission on Behalf of the International Commission of Jurists, available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/02/Suso-Musa-v-Malta080213final.pdf> (last visited 15 August 2014).
- 22** ECtHR, *Suso Musa v. Malta*, Application No. 42337/12, Judgment of 9 December 2013.
- 23** An Introduction to Advocacy, Training Guide, SARA Project.
- 24** Letter available at http://www.aedh.eu/plugins/fckeditor/userfiles/file/Comunicu%C3%A9s/PR_Unions%20&%20NGOs%20urge%20Parliament%20to%20scrutinise%20Greece%E2%80%99s%20Human%20Rights%20record.pdf (last visited 15 August 2014).
- 25** The Civic Education Center at the Masaryk University (Czech Republic), the University of Ljubljana (Slovenia), the Center for Civic Education (Poland), Romanian Society for Lifelong Learning (Romania) and Jaan Tõnisson Institute (Estonia).
- 26** Report available at http://www.age-platform.eu/images/stories/AGE_response_2010_Fundamental_Rights_Report_Nov11.pdf (last visited 15 August 2014).
- 27** Report available at <http://www.hrw.org/world-report/2013/country-chapters/european-union> (last visited 15 August 2014).
- 28** More on this issue is available at <http://fra.europa.eu/en/cooperation/civil-society/how-to-participate> (last visited 15 August 2014).

A must see list of publications and internet sites on the Charter of Fundamental Rights

Bojarski/Schindlauer/Wladasch et al., *The European Charter of Fundamental Rights as a Living Instrument – Manual*, 2014.

Charterpedia

<http://fra.europa.eu/en/charterpedia> – database on the Charter provisions and relevant case-law. Judgments of the Court of Justice of the EU and national courts are assigned to a particular Charter’s provision.

Court of Justice of the EU

<http://curia.europa.eu> – website of the main EU court. Judgments with references to the Charter may be easily found, simply select the Charter as a reference text in the search engine.

Europe of Human Rights

<http://www.europapraw.org/c/ue/cj-eu-anti-discrimination> – website of Helsinki Foundation for Human Rights’ (Poland) programme. Started in 2014. Will provide information about CJEU judgments referring to the Charter (in English).

European Commission

http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm – website of the European Commission’s Directorate-General ‘Justice’. Source of information about the implementation of the Charter in all EU member states (you can find annual reports on the implementation here: http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm).

European Union Agency for Fundamental Rights

<http://fra.europa.eu/en> – access to reports and analysis done by the Agency, concerning the level of protection of fundamental rights in all EU member states.



Ludwig Boltzmann Institute
Human Rights

The **Ludwig Boltzmann Institute of Human Rights** is an Austrian independent scientific research institute. In addition to fundamental research, its focus especially lies on multidimensional and interdisciplinary applied research, based on the core principles of empowerment, equality of all human beings and the participation of all parties concerned. This includes the dissemination of knowledge as reflected in core research projects and training exercises. More: <http://bim.lbg.ac.at/en>.



INPRIS

INPRIS (the Institute for Law and Society) is a Polish legal think tank founded in 2009. Our mission is to improve the quality of the law and standards of governance in Poland. INPRIS is an independent institution that is open to cooperation with various groups and experts both in Poland and abroad. Innovativeness in drafting and applying legislation, communicating understanding of the law, legal education and research is a particularly important goal for INPRIS. More: <http://www.inpris.pl/en/home/>.



National Research Council of Italy



Institute for International Legal Studies

The **Institute for International Legal Studies** (ISGI) is a scientific organ of the National Research Council of Italy (www.isgi.cnr.it). ISGI's research activities cover the most relevant sectors of public International law and European Union law. In the field of human rights, ISGI has consolidated experience in research and activities concerning the protection of fundamental rights in Europe.



GOVERNMENT OF THE REPUBLIC
OF CROATIA
Office for Human Rights and Rights of
National Minorities

The **University of Milan** is a public teaching and research university, a leading institute in Italy and Europe for scientific productivity; the Department of Italian and Supranational Public Law, one of the 31 Departments of the University, promotes and coordinates the scientific research and contributes to the organization of teaching activities in the areas which fall in its competence (Administrative, Constitutional, International, European Union and Procedural Civil law).



UNIVERSITÀ DEGLI STUDI
DI MILANO
DIPARTIMENTO DI
DIRITTO PUBBLICO ITALIANO
E SOVRANAZIONALE

The **Office for Human Rights and Rights of National Minorities of the Government of the Republic of Croatia** is established as a professional service of the Government for performing expert and administrative tasks connected with the protection and promotion of human rights. Main focus of the Office work are fundamental rights, rights of national minorities, hate crime, suppression of trafficking in human beings and integration of foreigners.

Łukasz Bojarski / Jane A. Hofbauer / Natalia Mileszyk
The Charter of Fundamental Rights as a Living Instrument
Guidelines for Civil Society



Ludwig Boltzmann Institute
Human Rights



GOVERNMENT OF THE REPUBLIC
OF CROATIA
Office for Human Rights and Rights of
National Minorities



UNIVERSITÀ DEGLI STUDI
DI MILANO

DIPARTIMENTO DI
DIRITTO PUBBLICO ITALIANO
E SOVRANAZIONALE

National Research Council of Italy



Institute for International Legal Studies



INPRIS



This project is co-funded by the European Union