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Member States' best practices on the Charter

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Spain



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Government policies that promote the use and awareness of the Charter among the legislator, the administration, law enforcement bodies and the judiciary.

Within the executive and the administration, awareness and use of the Charter are very uneven.

Whenever the government affirms its commitment to human rights, it mentions the importance of the Charter. Such as on [Human Rights Day](#), 10 December.

The use of the Charter by the Ministry of Foreign Affairs, European Union and Cooperation stands out for obvious reasons.

The Ministry's [website](#) affirms Spain's commitment to the promotion and protection of human rights, pointing out that the Charter of Fundamental Rights forms part of the domestic legal system of Spain and complements 'the list of rights and freedoms of the Spanish Constitution'.

The Ministry of the Interior is very familiar with the Charter as regards hate crime (*Action Plan to combat hate crime [Plan de Acción para combatir los delitos motivados por el odio]* (2019)), asylum (*Asylum and Refugee Office [Oficina de Asilo y Refugio]*) and the Subdirector General for International Protection [*Subdirección General de Protección Internacional*]) and data protection (*Intelligence Centre to combat Terrorism and Organised Crime [Centro de Inteligencia contra el Terrorismo y la Delincuencia Organizada]*).

In 2014, Instruction No 16/2014 of the Secretariat for Security was adopted, approving the '[Action Protocol for the Security Forces on hate crimes and behaviours breaching legal regulations on discrimination](#)' (*'Protocolo de actuación de las fuerzas y cuerpos de seguridad en materia de "delitos motivados por el odio" y conductas que vulneren las normas jurídicas sobre discriminación'*). This Instruction was amended the following year by Instruction No 16/2015, as a result of various legislative reforms. The aforementioned protocol has been specifically cited in the compendium of best practices from across the European Union on how to combat hate crime. Compendium published by the European Union Agency for Fundamental Rights (FRA). It contains measures and actions developed by the EU Member States to combat 'hate crime' and the Charter of Fundamental Rights of the European Union was one of many regulations it applied, although it did not feature prominently.

The same State Secretariat for Security of the Ministry of the Interior approved an '[Action Plan to combat hate crime](#)' (*'Plan de Acción para combatir los delitos motivados por el odio'*) whereby the National Police participates in training programmes and exchanges of best practices among the Member States of the European Union Agency for Fundamental Rights (FRA).

The Ministry of Justice has competence in the field of human rights and pays particular attention to the Charter when drawing up draft laws, both in the explanatory memorandum and in the preparation of Regulatory Impact Assessment Reports, especially when it comes to the transposition of European directives, the adaptation of the Spanish legal system to European law or compliance with international treaties or conventions signed by Spain in these areas.

Special attention should be paid to the [Office for Regulatory Coordination and Quality](#) (*Oficina de Coordinación y Calidad Regulatoria*) (within the Ministry of the Presidency, Relations with the Spanish General Courts and Democratic Memory [*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*]), created in 2017 with the objective of ensuring the coordination and quality of the regulatory activity carried out by the government. As part of this general task, it must examine ‘the consistency of the regulatory initiative with the rest of the legal system, both national and European Union’, in accordance with Article 26(9) of Law 50/1997, of 27 November 1997. The Office has recently begun to require in its reports that the Regulatory Impact Assessment Reports analyse whether the draft legislation conforms with the Charter. This is the reason why it is thought that this Office could play a very important role in promoting the consideration of the Charter in the drafting of legislation, leading to increased awareness of the importance of the Charter in all ministries of the Executive.

The Charter is also an important factor taken into account when deciding whether the Spanish State should participate in preliminary rulings by the courts of the other Member States, having already done so in relation to the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter on conditions of detention in prison cases C-128/18 of 15 October 2019, C-220/18 PPU of 25 July 2018 and C-496/16 of 15 November 2017), respect for private and family life and the protection of personal data (Articles 7 and 8 of the Charter, case C-73/16 of 27 September 2017), equality before the law and non-discrimination (Articles 20 and 21 of the Charter, Case C-205/15 of 30 June 2016) and the right to an effective remedy and to a fair trial (Article 47 of the Charter, case C-73/16 of 27 September 2017).

On 9 May, Europe Day, the Spanish Federation of Municipalities and Provinces (*Federación Española de Municipios y Provincias*) issued the ‘[Manifiesto for a local and regional Europe](#)’ (*Manifiesto por una Europa local y regional*), which proposed: ‘Promoting the Charter of Fundamental Rights of the European Union as well as the history of the EU in schools in all Member States and advancing knowledge of the functioning of the institutions. It is important to introduce appropriate financial and legal conditions to ensure that all pupils have the opportunity to visit the European institutions throughout their school life.’

In the Legislative Assembly, the explanatory statements of laws sometimes refer to the Charter; in parliamentary debates, the ECHR and ECtHR rulings are often used as an authority or criterion, unlike the Charter or the CJEU which are not generally used so often; however, the Charter is starting to be used more and more, although certainly not in a wide sense. The Europeanism of Spanish parliamentarians is beyond any doubt, but it would be beneficial if they had better training or knowledge that is more easily available and accessible, an area in which there is always room for improvement, as indicated below. Monitoring of the work of the Joint Committee on the European Union (*Comité Mixto para la Unión Europea*) reveals (Joint Commission on the European Union [*Comisión Mixta para la Unión Europea*]) that the Charter is not one of the most time-consuming issues in its work.

The Joint Commission on the European Union of the Spanish Congress of Deputies (Joint Commission on the European Union) could routinely monitor matters relating to the Charter, such as the adoption of European legislation, relevant case-law, etc.

Within the judiciary, the Fundamental Rights Agency has ‘recognised the increasingly important role of national courts in ensuring the effectiveness of the Charter’. Awareness of the Charter is increasing among judges, despite the fact that the Charter does not feature significantly in the syllabus of state examinations to become a judge. The study of the Charter was introduced into the syllabus in the 2016 session, within the subject corresponding to Human Rights Treaties, together with the Universal Declaration of Human Rights, other UN treaties and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was only in 2020 that the Charter became part of the subject matter for European Union law.

Once candidates have passed the entrance exam for a career in the judiciary, workshops ([the teaching plan](#) [*el plan de enseñanza*]) are held at the Judicial College (attached to the General Council of the Judiciary) to deepen knowledge of key cases such as the Familiapress case (Case C-368/95 of 26 June 1997), the Grogan case (C-159/90 of 4 October 1991), the García Avello case (C-148/02 of 2 October 2003) and the Kücükdeveci case (C-555/07, of 19 January 2010). Other key cases relating to the Charter are examined in depth, such as the Fransson case (C-617/10 of 26 February 2013), the Melloni case (C-399/11 of 26 February 2013), the Aranyosi and Căldăraru joined cases (C-404/15 of 5 April 2016 and C-659/15 PPU of 3 March 2016) and the N.S. and M.E. joined cases (C-411/10 of 21 December 2011 and C-493/10 of 22 September 2011).

The number of different continuous training courses on European Union law offered to judges by the General Council of the Judiciary has increased since 2010, but there are no courses exclusively dedicated to the Charter; since 2018, however, the Charter has started to play a leading role in European law courses. In addition, courses on fundamental rights or the impact of European law on certain jurisdictions, mainly administrative law, social law and also criminal law, are studied.

Tools that help clarify the Charter and when it applies

There is an increasing number of publications and tools that explain what the Charter consists of and how it should be implemented. Some examples are provided below, reflecting the various powers, levels of administration and civil society.

The Constitutional Court has drawn up a '[Compendium of case-law of the Constitutional Court on European Union Law](#)' [*Prontuario de jurisprudencia del Tribunal Constitucional sobre el Derecho de la Unión Europea*], a section of which is dedicated to 'D) The relationship between the Constitution and the Charter of Fundamental Rights of the European Union', which addresses issues such as 'elements of shared interpretation' and 'clashes'.

The Human Rights Institute of Catalonia (*Institut de Drets Humans de Catalunya*), together with the General Council of the Judiciary, organised a course on '[The Charter of Fundamental Rights of the EU for public prosecutors and members of the judiciary](#)' [*La Carta de los Derechos Fundamentales de la UE para fiscales y miembros de la judicatura*], which focused on legal practice with the aim of providing public prosecutors and members of the judiciary with tools to facilitate the use of the legal framework of fundamental rights and thus disseminate the scope of the Charter.

The Madrid local authority has released a digital publication entitled '[The Europe that we want. 20 Charters for Europe](#)' (*La Europa que queremos. 20 Cartas para Europa*), which includes the main European texts on services and rights, including, of course, the Charter of Fundamental Rights of the European Union (pages 20 to 31).

The Spanish Bar Council (*Consejo General de la Abogacía*), a professional public-law body bringing together professional lawyer associations, includes an entry on its website that explains the application of the EU Charter of Fundamental Rights.

On its website, the Federation of Associations for the Prevention of Child Abuse (*Federación de Asociaciones para la Prevención del Abuso Infantil – FAPMI*) provides a detailed explanation of the information needed to understand the [Charter](#), based on basic data, a detailed description and its subject areas.

Cooperation with stakeholders to promote the use and awareness of the EU Charter of fundamental rights

[The Madrid local authority has approved the inclusion of a subject on the European Union in the syllabus](#) used by secondary schools, which also includes the Charter of Fundamental Rights.

Examples of non-governmental initiatives that promote the use and awareness of the Charter in your country

The Spanish Committee of Representatives of Persons with Disabilities (*Comité Español de Representantes de Personas con Discapacidad – CERMI*), a platform founded in 1997 for the representation, defence and action of Spanish citizens with disabilities, has repeatedly called on the authorities to improve their rights and has [invoked the Charter](#) to that end in dealings with the national authorities.

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