



The Charter of Fundamental Rights of the EU

“in action”

SURVEY TO THE JUDICIAL ACTORS ABOUT THE CFR APPLICATION Global Report



Centro de Estudos Sociais
Universidade de Coimbra



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Justiça



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Introduction

The project *The Charter of Fundamental Rights of the European Union “in action”*, funded by Directorate-General for Justice of the European Commission, is coordinated by the Permanent Observatory of Justice of the Centre for Social Studies of the University of Coimbra (Portugal) and developed in partnership with the Institute of Human Rights of Catalonia (Spain), the University of Utrecht (The Netherlands) and the University of Szczecin (Poland). Its central goal is to promote the knowledge and the application of the Charter of Fundamental Rights of the European Union. Combining a theoretical approach with a dissemination strategy of the contents and potentialities of this legal instrument, the project includes a comprehensive training programme (classroom training, e-learning, workshops) aimed at judges, prosecutors and lawyers, focusing on the instruments for the protection of fundamental rights, in particular the Charter, and contributing to the knowledge about the legal framework of fundamental rights and its applicability, but also for sharing experiences and good practices. In order to better prepare the contents of the training programmes, an online survey was applied in each partner country, which was an instrumental methodology to identify the familiarity or distance of judicial actors in the implementation of the Charter and the main topics to include in the training programmes.

Following the methodology used in other similar investigations, the Permanent Observatory of Justice of the Centre for Social Studies requested the collaboration of the High Council of the Judiciary, the Prosecutor General’s Office and the Bar Association for the implementation of the survey. Their cooperation consisted in the dissemination of the survey and the request for answers, respectively from judges, prosecutors and lawyers, by electronic mail and through their web pages (mentioning the link to the survey). Similarly, in Spain collaboration for the dissemination of the survey was obtained from a variety of entities, organisations and foundations, who have a direct relationship with these legal professionals. However, the Dutch and Polish partners faced some difficulties in finding enough respondents namely due to

the lack of cooperation of judicial entities. Even though a strategic collaboration was sought among several judicial institutions, unfortunately some did not want to cooperate. In the Netherlands, the reason for this was that legal actors are already overloaded with information and they have a high workload. The cooperation was not considered desirable since it was expected that it would not be useful – legal actors would not fill out the survey and attend the training sessions. Nonetheless, some judicial institutions did cooperate with the Dutch team. For example, the NOvA (Nederlandse Orde van Advocaten) played a major role not only in the dissemination of the survey, but also in the announcement of the classroom training for lawyers in their journal. In order to gain additional useful information, the Dutch team conducted several interviews with individual judges and lawyers that replicated the survey questions. Unfortunately, it was not possible to conduct interviews with public prosecutors. The online survey was applied ensuring the anonymity of the respondents, and no personal data was collected to enable their identification.

In Portugal, the survey was applied between February 1 and March 30, 2017 and obtained 253 validated responses, including 130 judges, 55 prosecutors and 68 lawyers. In Spain, the survey was available online from 1 February to 6 March of 2017 and obtained 485 valid responses, distributed as follows: 369 judges, 106 lawyers and 10 prosecutors. In Poland, the first answer arrived on February 19, 2017 and the last one on March 17, 2017. There were 24 responses: 11 judges, 11 lawyers and 2 did not declare their legal profession. In the Netherlands, 70 respondents filled out the survey, which included 41 judges, 18 prosecutors and 11 lawyers.

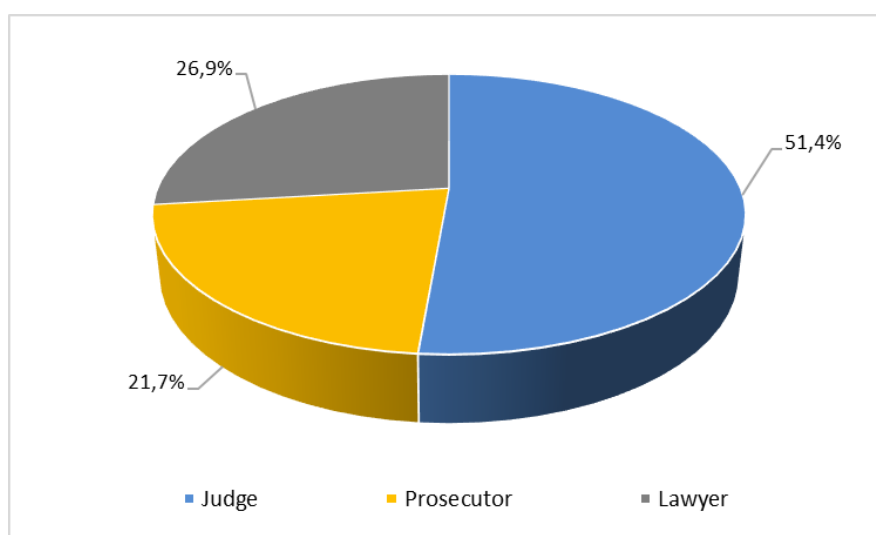
The analysis of the results obtained through the application of this survey, which is presented in this report, is structured around three main dimensions: the description of the universe of respondents to the survey; the level of knowledge regarding the implementation of the Charter of Fundamental Rights of the European Union; and the identification of the main thematic areas in which training needs are recognised, including the suggestion of specific themes to incorporate in the training sessions to be promoted within this project.

Characterization of the respondents' universe

Portugal

The survey had 253 responses (54% female and 45% male). Regarding the legal profession, 130 were responses from judges (51.4%), 55 from prosecutors (21.7%) and 68 from lawyers (26.9%). – cf. Chart 1.

Chart 1 – Profession

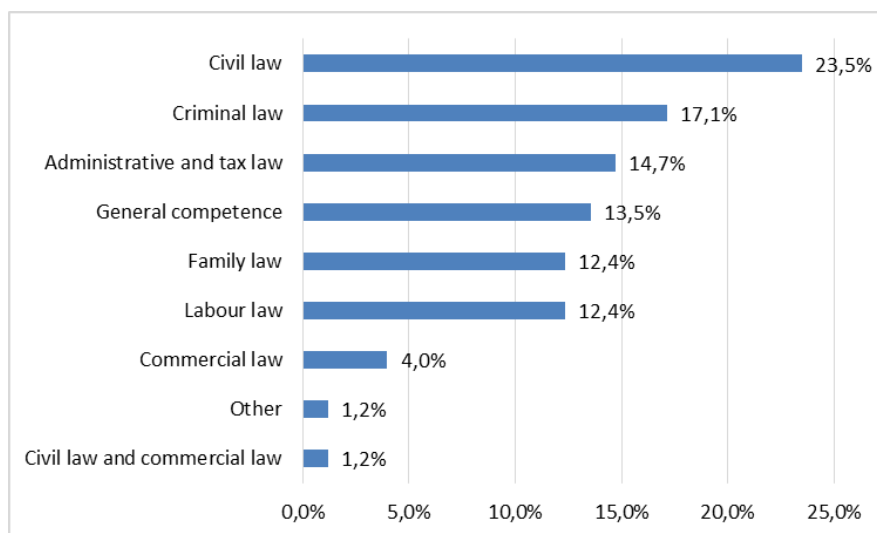


Source: CES/OPJ.

Considering the heterogeneity of possible areas of work of the judicial actors, we tried to situate the respondents through two questions: a) the most relevant areas of law in they perform their professional duties; and b) for judges and prosecutors, the type of court, section or Prosecutor's Office in which they performed their professional duties at the time of the answer to the survey. The majority of respondents performed civil law functions (23.5%), followed by criminal law (17.1%), administrative and tax law

(14.7%), labour law (12, 4%) and family law (12.4%) – cf. Chart 2. The prominence of the civil area is in line with the fact that it absorbs the majority of judges.

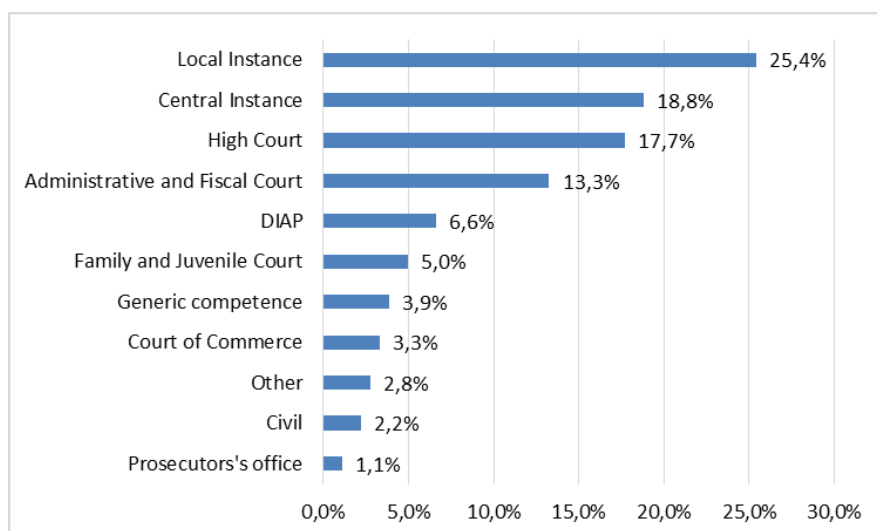
Chart 2 - Area of law in which they perform duties (most relevant)



Source: CES/OPJ.

With regard to the courts where respondents perform functions, 25.4% did so in local courts, 18.8% in central courts, 17.7% in higher courts and 13.3% in administrative and tax courts – cf. Chart 3.

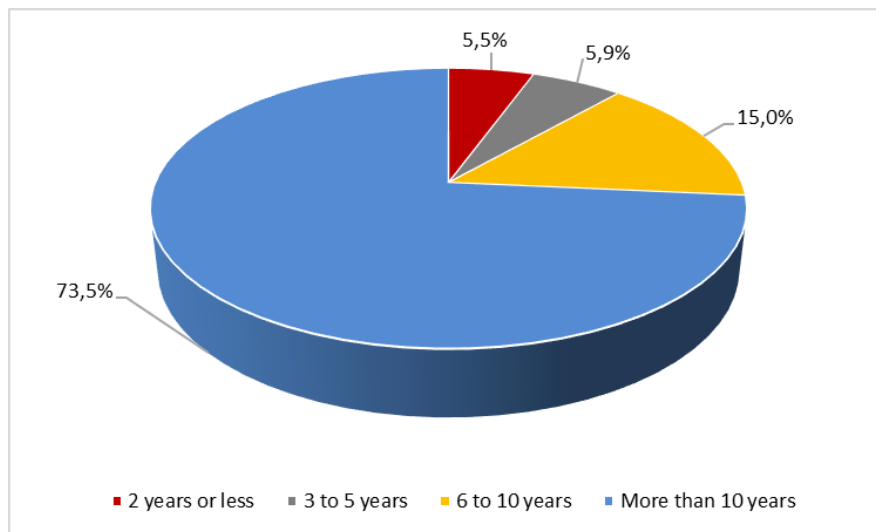
Chart 3 – Court in which they perform



Source: CES/OPJ.

Still, with regard to the sociological characterization of the judicial actors who responded to the survey, the overwhelming majority (73.5%) have been working for more than 10 years, 15% are professionals whose professional activity is between 6 and 10 years, 5.9% between 3 to 5 years and 5.5% for 2 years or less years – cf. Chart 4.

Chart 4 – Seniority (number of years in office)



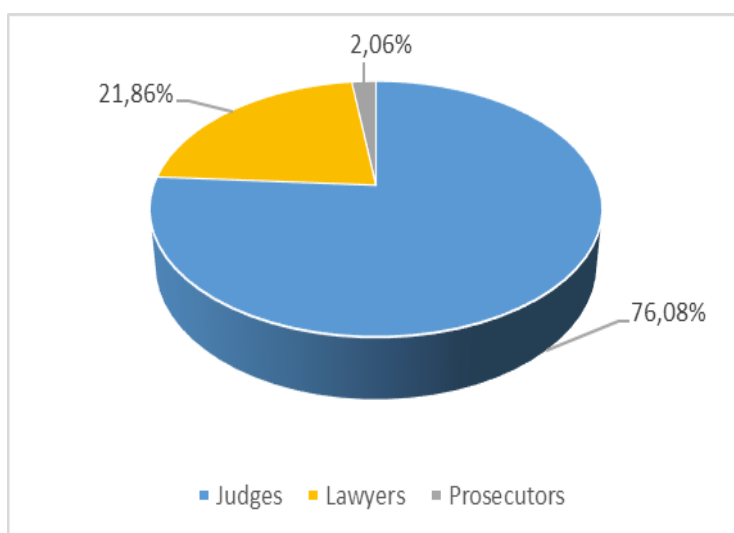
Source: CES/OPJ.

Spain

In Spain, 485 legal professionals participated in the survey, distributed as follows: 369 judges (76.08%), 106 lawyers (21.86%) and 10 prosecutors (2.06%) – cf. Chart 5. Of the 369 judges that answered the survey, there is an almost equal distribution between men and women – 179 male (49%) and 189 female (51%). Of the 106 lawyers, 56 were male (54%), 49 female (45%) and one did not answer (1%). Of the 10 prosecutors that responded to the survey, 6 were male (60%) and 4 female (40%). The participation of the prosecutors has been very low, which makes us doubt about their interest in the participation of the training programme that will be carried out within the framework of this project. As such, we will focus especially on the results obtained among lawyers

and judges, since the data related with the prosecutors is not representative and does not allow us to withdraw relevant conclusions.

Chart 5 – Profession

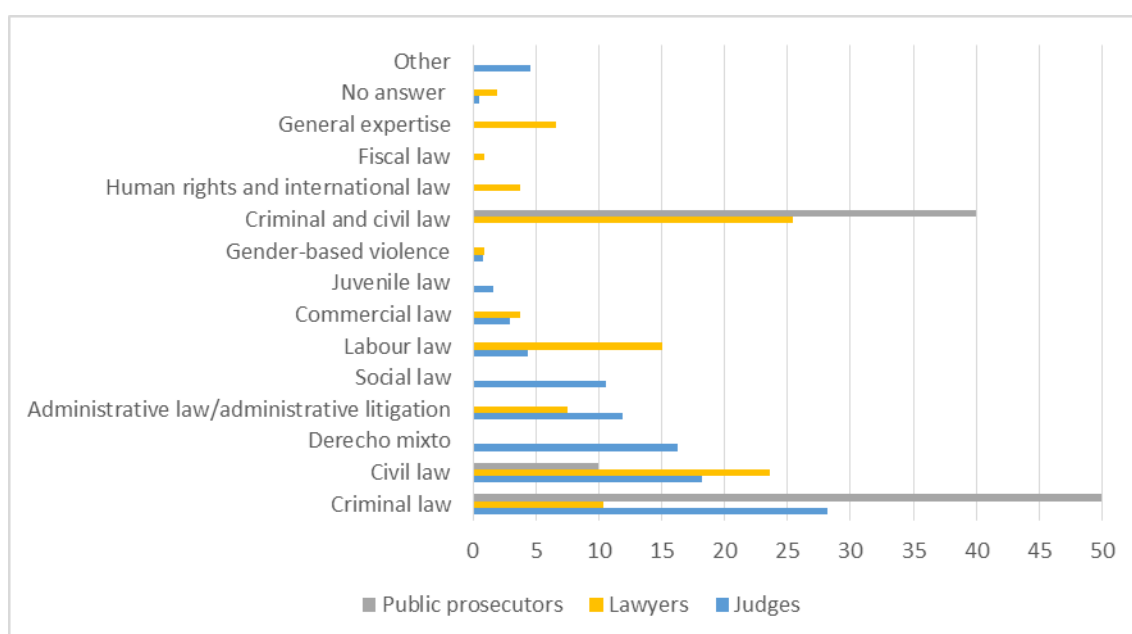


Source: IDHC.

With respect to the area of law in which they perform their functions, we find a very diverse group among judges and lawyers, with representation from most areas of law – Cf. Chart 6. Regarding the judges, we highlight especially people who are dedicated to criminal law and, to a lesser extent, civil and general. In order of relevance: criminal law (28.18%); civil law (18.16%); *derecho mixto* (which includes family and disability) (16.26%); administrative litigation (11.92%); social law (10.57%); labour law (4.34%); commercial law (2.98%); juvenile law (1.63%); and gender-based violence (0.81%). Two judges did not answer to this question (0.54%) and 17 chose other areas (4.61%). Concerning the lawyers, we highlight especially people who are dedicated to civil and criminal law. The main areas in order of relevance are the following: criminal and civil law, with some including other options (25.47%); civil law, including family law and in some cases a combination with commercial law (23.58%); labour law, including other specialties such as criminal law, civil law, insolvency law, administrative law (15.09%); criminal law (10.38%); administrative law (7.55%), including a combination with other specialties; lawyers with general expertise (6.60%); commercial law (3.77%); human

rights and international law (3.77%); fiscal law (0.94%); gender-based violence (0.94%). Two people did not answer (1.89%). In relation to the prosecutors, 40% work in civil and criminal law; 50% work only in criminal law, with one in international criminal law; and 10% work in civil law, in areas such as family law, disability, immigration.

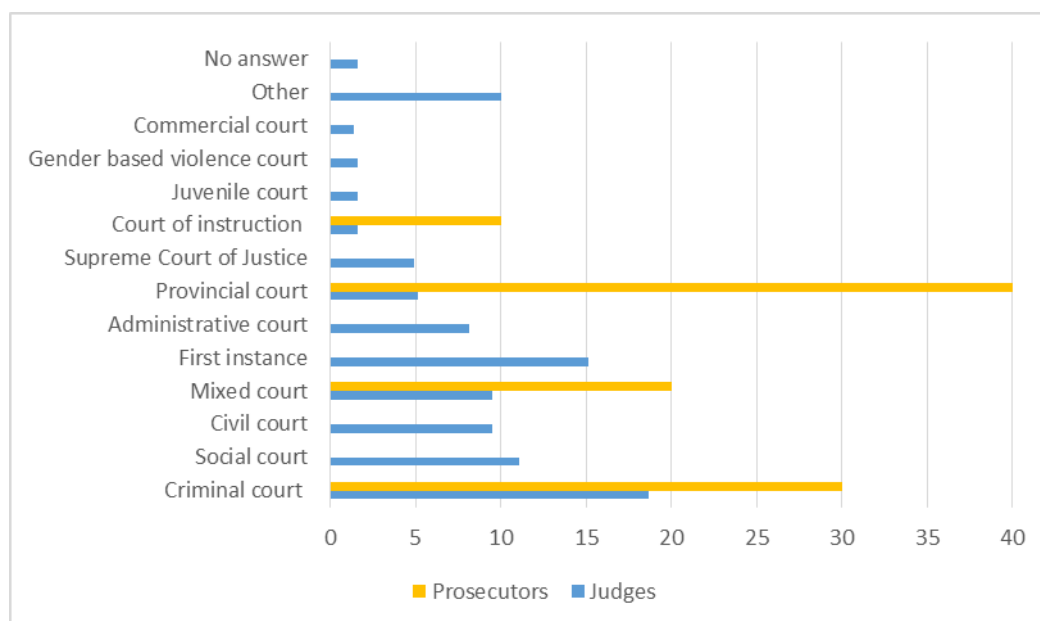
Chart 6 – Areas of law in which the legal actors perform their functions



Source: IDHC.

With regard to the type of courts wherein the judges and prosecutors who answered perform their functions, we also have a wide range – Cf. Chart 7. With respect to the judges, we can highlight the criminal courts (18.7%), the first instance courts (15.18%) and the social courts (11.11%). Regarding the prosecutors, 30% work in criminal courts, 20% in mixed courts, 40% perform their functions in provincial courts and 10% in the court of instruction.

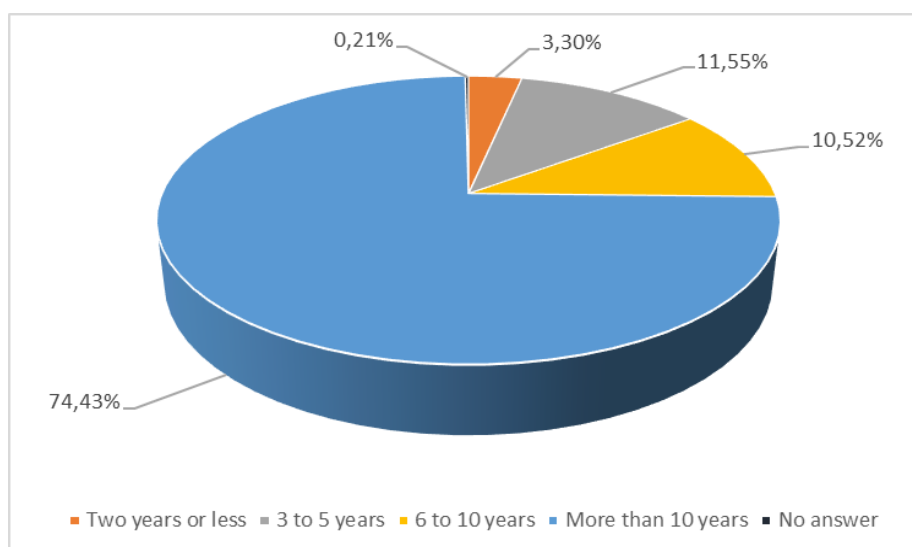
Chart 7 – Type of courts wherein judges and prosecutors exercise their functions



Source: IDHC.

The large majority of the respondents has more than 10 years of experience in the judiciary (74.43%) – cf. Chart 8.

Chart 8 – Seniority (number of years working as a legal professional)

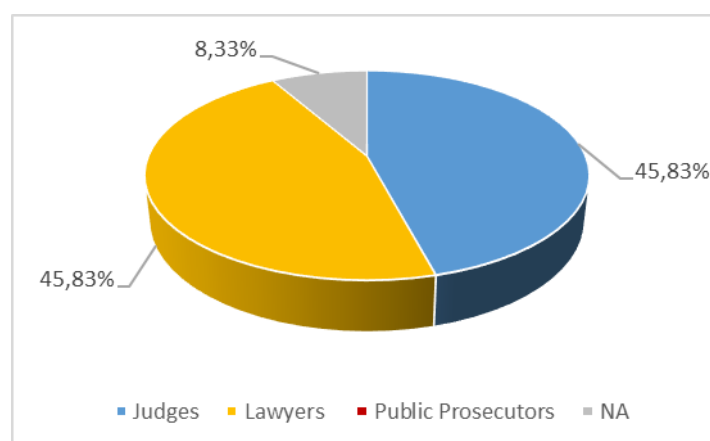


Source: IDHC.

Poland

The Polish survey was answered by 24 persons. The first answer arrived on February 19, 2017 and the last one on March 17, 2017. Concerning the gender, we have among 24 respondents, 13 men (54.17%), 10 women (41.67%), and one did not declare the gender (4.17%). Regarding the legal profession, 11 of the respondents are judges (45.83%), while 11 are lawyers (advocates or legal advisors) (45.83%). Two of the respondents did not declare their legal profession (8.33%) – cf. Chart 9.

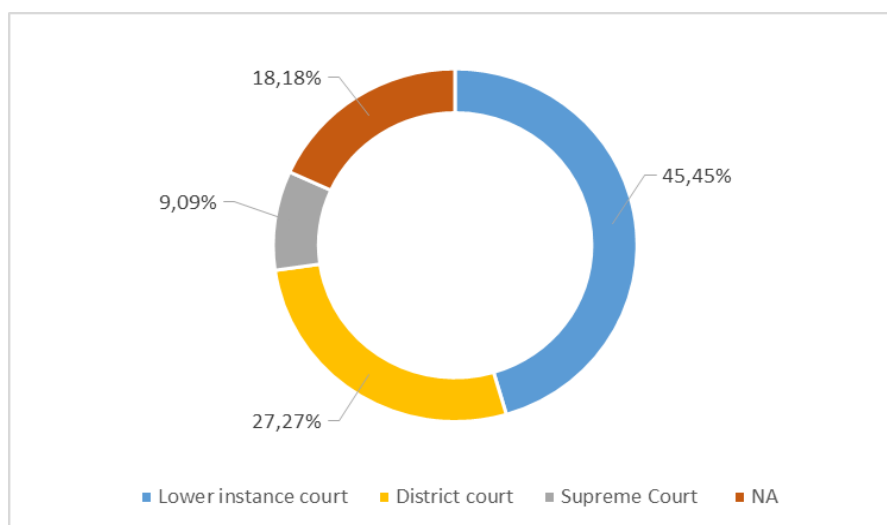
Chart 9 – Profession



Source: US.

With respect to the type of courts of the judges who answered, 5 of them are judges of lower instance courts (sąd rejonowy), 3 are judges of district courts and 1 is a judge of the Supreme Court – cf. Chart 10. The interest shown by the judges of lower instance shows that the questions of the application of the Charter concern more and more everyday practice.

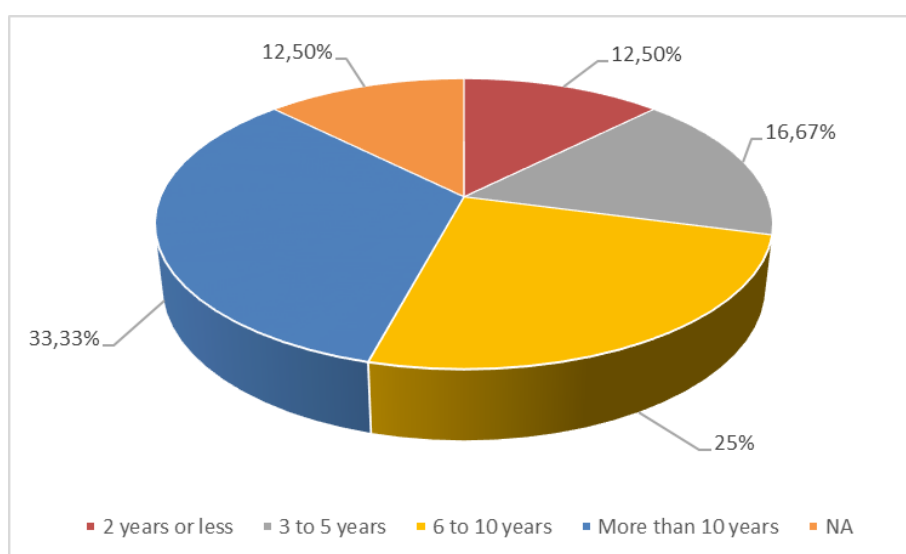
Chart 10 – Type of courts wherein the judges perform their functions



Source: US.

On the number of years of practice, 3 of the respondents had less than two years of practice (12.50%), 4 had a practice between three and five years (16.67%), 6 had a practice from six to ten years (25%) and 8 had a practice of over 10 years (33.33%) – cf. Chart 11. A high number of respondents had more than 10 years of experience. We observe that the interest for the Charter grows with the professional experience of the respondents.

Chart 11 – Seniority (number of years working as a legal professional)

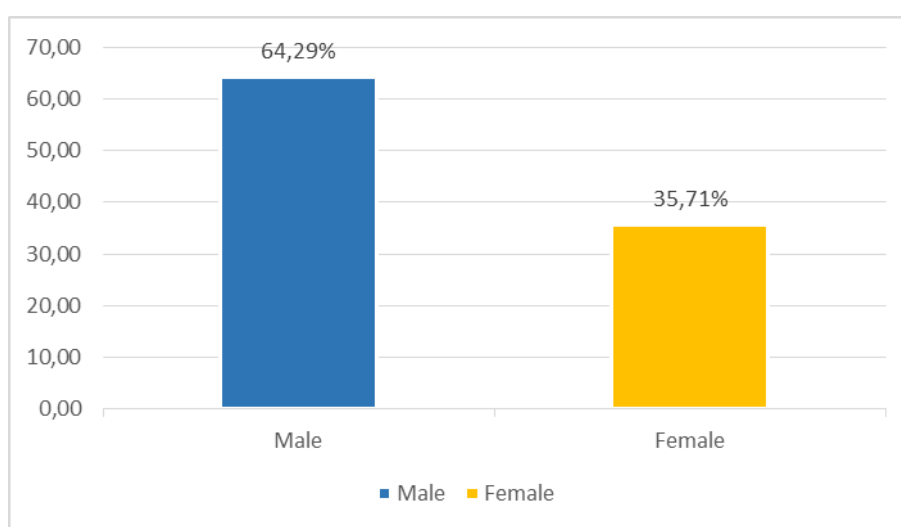


Source: US.

The Netherlands

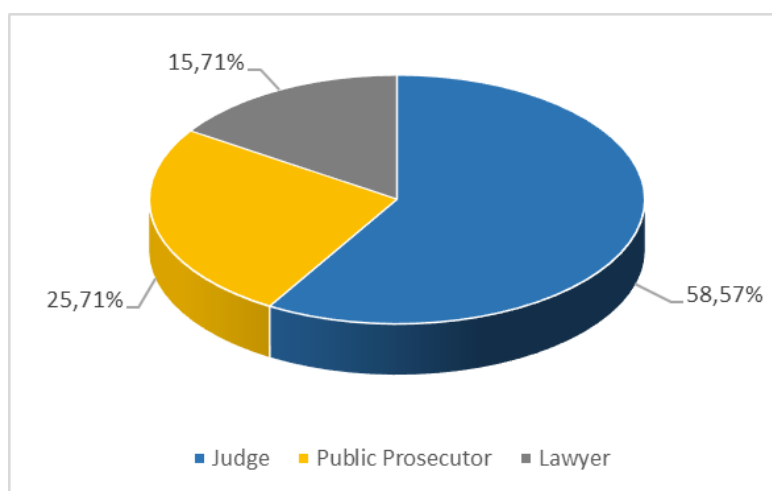
Despite the already mentioned efforts to bring the survey under the attention of judges, lawyers and public prosecutors, the response to the survey was very low. 70 respondents eventually filled out the survey: 45 male (64.29%) and 25 female (35.71%) – cf. Chart 12. With regard to the profession, 41 were judges (58.57%), 18 public prosecutors (25.71%) and 11 lawyers (15.71%) – cf. Chart 13. Most of them were active in criminal law or administrative law (migration law and environmental law).

Chart 12 – Gender



Source: UU.

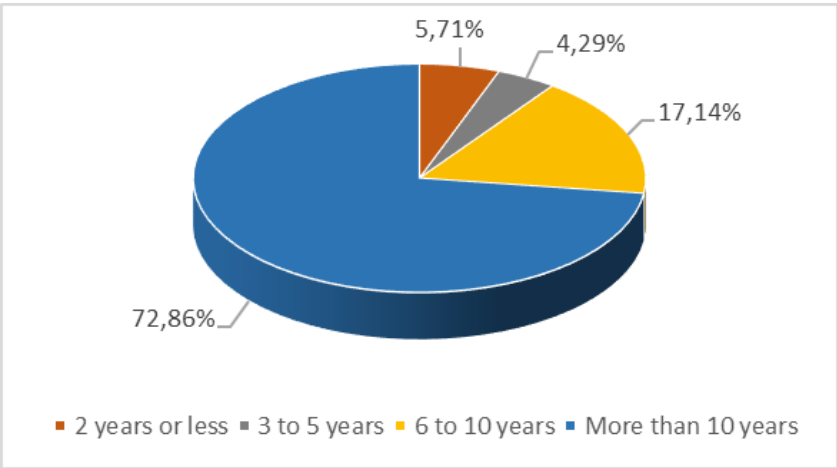
Chart 13 – Profession



Source: UU.

The majority of respondents had an ample experience as a legal professional: 72.86% of them were working in their legal profession for more than 10 years – Cf. Chart 14.

Chart 14 – Seniority (number of years working as a legal professional)



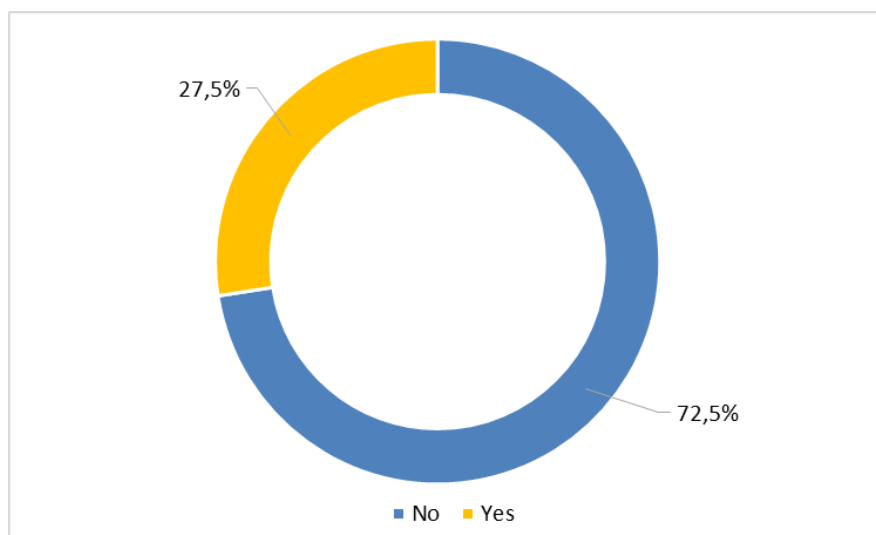
Source: UU.

Knowledge on the Charter of Fundamental Rights and its application

Portugal

The effectiveness of this project is largely dependent on the adequacy of the training programme to the expectations and real training needs of the judicial actors. Hence, we considered important to assess the level of knowledge of judicial actors on the Charter and their experience in the application of this instrument. With respect to the experience in the application of the Charter and/or with cases wherein the possibility of implementation of the CFR has been considered, 72.5% of the respondents never applied or worked in cases wherein the applicability of the Charter has been raised – cf. Chart . This fact expresses the importance of training in this area, with a special focus on the dissemination of the contents of the Charter and its field of application.

Chart 15 – Experience in implementing the Charter of Fundamental Rights

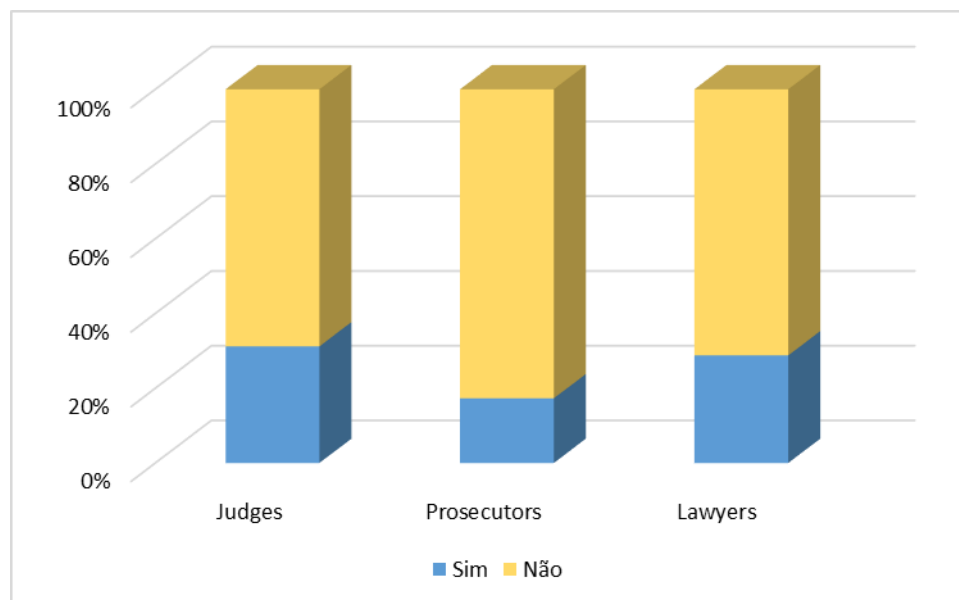


Source: CES/OPJ.

The analysis of the experience in the application and/or applicability of the Charter by legal profession, presents some differences, although not very significant. As shown in Chart 16, only 31.2% of judges, 17.3% of prosecutors and 28.8% of lawyers state to

have already been confronted with the application or the applicability of the Charter in the exercise of their professional activity.

Chart 16 - Experience in implementing the Charter of Fundamental Rights (by legal profession)



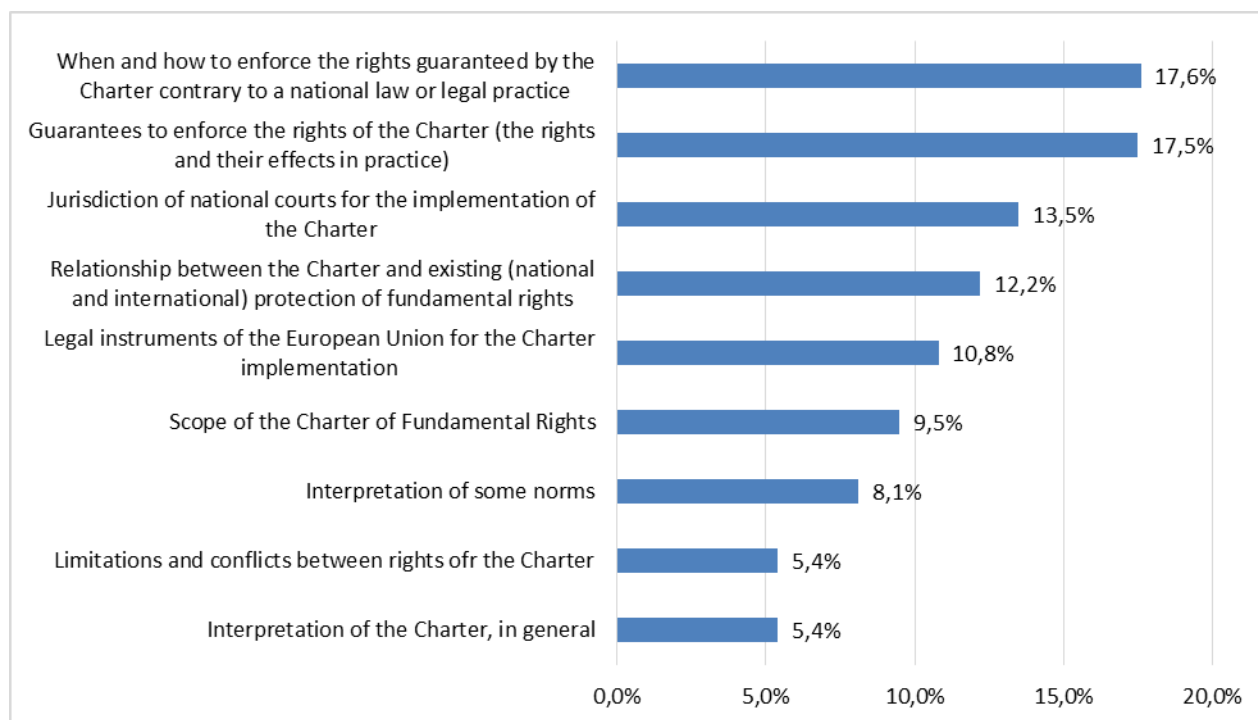
Source: CES/OPJ.

The accounts of judicial actors about their difficulties in interpreting the Charter are an important reference point for the definition of the training programmes that promotes the quality and efficiency of functional performance. The training programme should therefore seek to encourage reflection on new approaches to this issue by promoting a broad debate on the mobilization of human rights, but also enabling judicial actors to provide a critical and technically sustained interpretation of the Charter.

The respondents were also asked whether, having applied the Charter or questioned its applicability, they have identified any difficulty in interpreting and applying its rules. The responses were mostly negative (67.2%). Considering the positive responses, they were asked to identify the subjects, in which they had more difficulties, giving a set of possibilities of response. For the majority of these actors, the difficulties are not in the interpretation of the rules, but in the conditions of their specific application. The following two subjects were the most difficult to overcome: a) “when and how to uphold the rights guaranteed by the Charter contrary to a national law or legal

practice”; b) “Charter rights’ guarantees – rights and their effects in practice” – cf. Chart.

Chart 17 – Matters that raise more difficulties



Source: CES/OPJ.

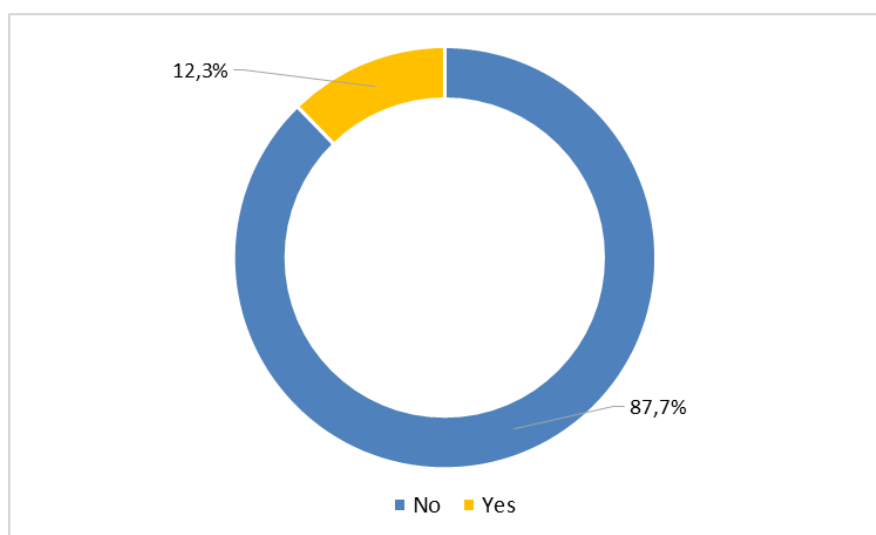
As mentioned before, only a small number of respondents found difficult to interpret some provisions. For these, the rights in which they experienced the most difficulties were the following (with equal representation):

- Right to freedom of expression and freedom of the press;
- Right to a fair trial;
- Property right;
- Right to a good administration;
- Provisions related to criminal investigation (unlawful police actions), detention and coercive measures;

- Criminal procedural rules and the compatibility between the right to honour and freedom of expression.

The survey also included a question addressed only to judges on the preliminary ruling mechanism to the Court of Justice of the European Union concerning the Charter of Fundamental Rights. As is well known, the role of this procedure is to ensure the uniformity of interpretation or verify the validity of European Union law. 87.7% of the respondent judges stated that they had never raised any question – cf. Chart .

Chart 18 – Preliminary rulings



Source: CES/OPJ.

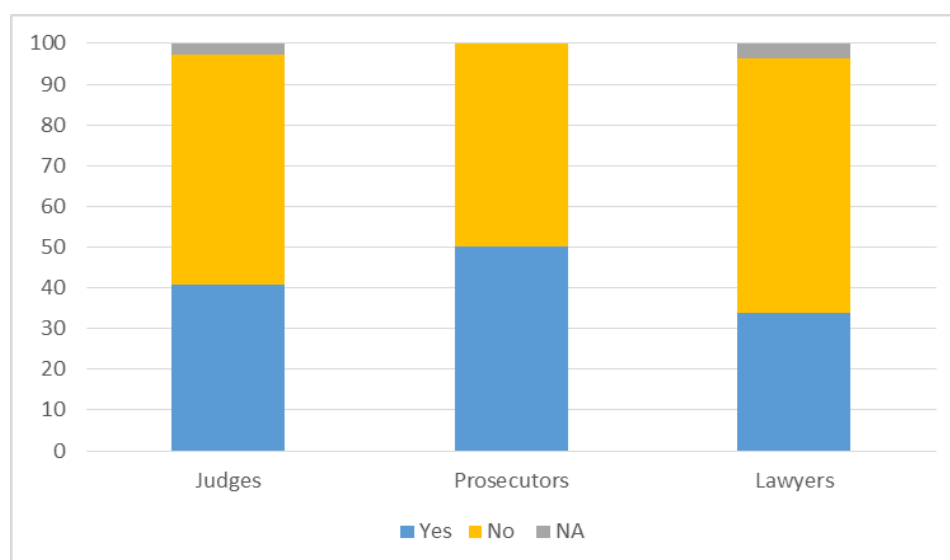
Considering the survey data, there is a low use of this instrument among us. However, the respondents considered the frequency of training on the Charter of Fundamental Rights to be extremely important. Only a minority (about 13%) attended training in this subject, which generally had a duration equal or inferior to two days. In line with the short period of training, the subjects of the training attended were of a general nature, focusing in particular on the Charter in general, the scope, principles and grounds, the case law of the CJEU and the reference for a preliminary ruling. Professionals who did not attend training sessions on the EU Charter of Fundamental Rights stated that they did not do so mainly because they were not aware of the existence of any training on this topic, i.e. due to the lack of training available (60% of respondents).

The survey also sought to ascertain the level of knowledge of the actors interviewed about the available materials on the implementation of the Charter (reports and other documents). Consistent with the above data, 58.6% admitted that they had insufficient knowledge (weak and very weak) of those materials. The responses to the question on the level of use of the available materials shows a similar trend, with 65.9% of judicial respondents reporting reduced and very limited use.

Spain

From the results, it is clear that there is still a majority of judges who have never faced the Charter, 56%, compared to 41% who have. The same can be said with respect to the lawyers. According to the results that emerge, the lawyers who have not faced the Charter (62%) are the majority compared to those who have faced (34%). Concerning the prosecutors, half of the respondents have experience with the CFR – cf. Chart 19.

Chart 19 – Experience with the applicability of the Charter by profession



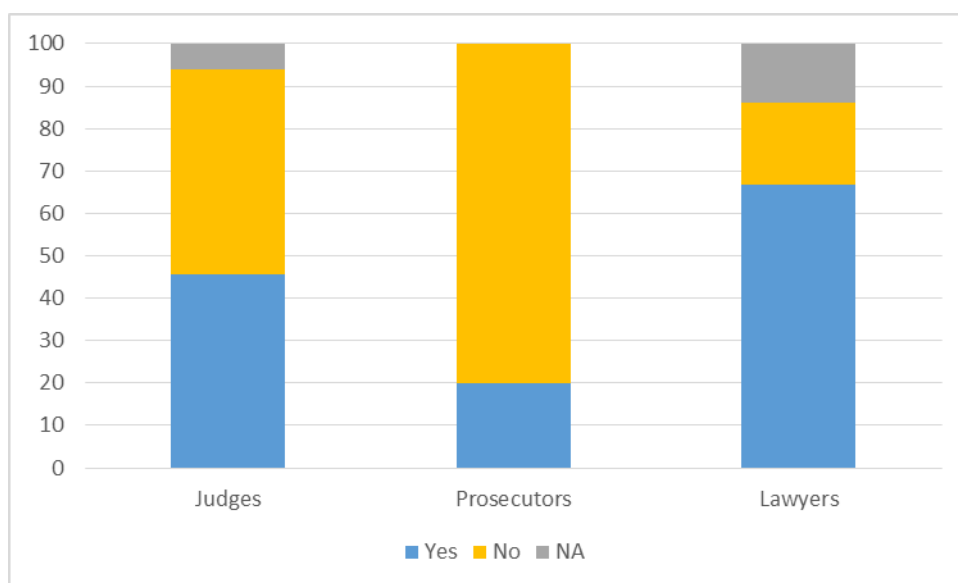
Source: IDHC.

Of the lawyers who answered affirmatively to having experience in dealing with the Charter, 67% say they have had difficulties with the application of this instrument. Concerning the prosecutors, only 1 person said to had problems with the applicability

of the Charter. With respect to the judges approximately half (46%) said they have had difficulties with the interpretation and application of the Charter – cf. Chart 20.

The matters that caused more difficulties are very similar among the different judicial actors – cf. Chart 21. Specifically among the lawyers, the majority of difficulties arise in relation to the application of the Charter in specific cases, more specifically with the interrelation between the CFR and other systems of protection of existing fundamental rights, as well as more practical aspects such as the determination of the guarantee of the rights protected by the Charter and their effects in practice. The only prosecutor that answered affirmatively had difficulties with the interpretation and application of the Charter in general. Among the judges who say they have had difficulties in the interpretation or application of the CFR, most obstacles arise in relation to the scope of the letter (interrelation between the CFR and other systems of protection of existing fundamental rights and the competence for the application of the CFR at national level through national courts) as well as more practical aspects of application of the Charter (guarantees of the rights protected by the Charter, rights and their effects in practice).

Chart 20 – Difficulties with the applicability of the Charter by profession



Source: IDHC.

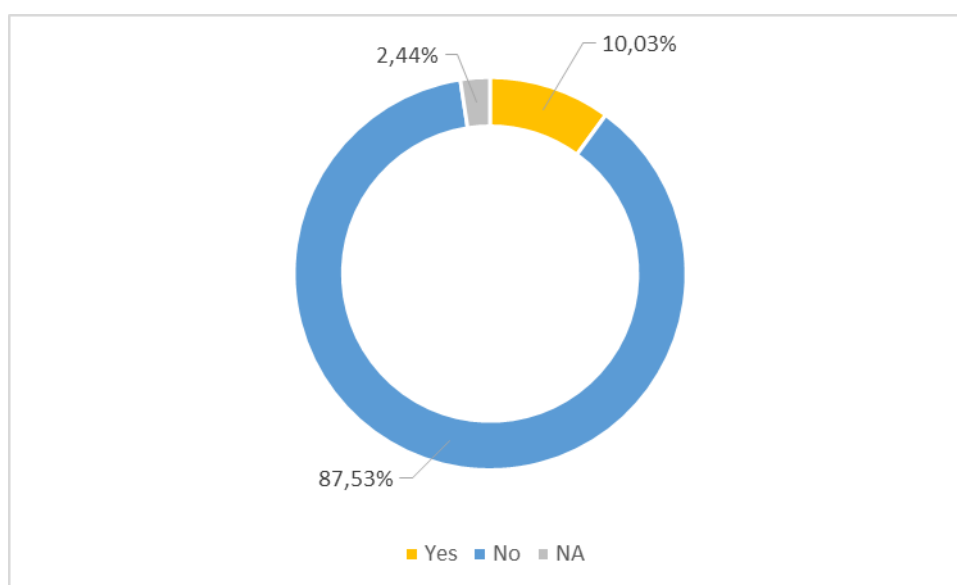
Chart 21 – Matters that caused more difficulty



Source: IDHC.

Specifically, for the judges, there was a question on the use of the preliminary ruling mechanism. Only 37 respondents (10%) said they have raised or considered submitting a preliminary ruling to the CJEU – cf. Chart 22 –, a figure that represents 53.6% of the respondents who said they have faced the Charter and have had difficulties with the application or interpretation of this instrument. This results could be due to several factors, but we point three: a) firstly, the fact that the difficulty of the application or interpretation was insignificant for the resolution of the case; b) secondly, that there is a lack of knowledge about the procedure for raising a preliminary ruling question; and c) thirdly, we note the fact that the obligation to raise a preliminary ruling in the event of a doubt of interpretation or application of any European standard is only applicable to courts whose decisions are not subject to domestic remedies, although all have the power to raise a preliminary ruling at any time during the procedure.

Chart 22 – Preliminary ruling



Source: IDHC.

Regarding the importance that judges give to the training on the Charter, the highest percentage is among those who consider that training is very important (34%) followed by those who consider that the importance of training is very low (22%) – cf. Chart 23.

However, in this case, where the evaluation is numerical (on a scale of 1 to 5) we must consider the possibility of confusion with the numbering, since considering 1 as the highest rating and 5 as the lowest can lead to mistakes. Having made this observation, the judges who consider training very important (1) or important (2) represent 48% of the total compared to 35% who value training as little important (4) or not important (5). With respect to the prosecutors, the data is not positive, since the majority of respondents do not consider the training on the CFR important or position in a neutral manner – cf. Chart 23. The reasons may be that they have never faced the Charter or have already received training on it and consider it sufficient since 70% of the total has received at least 1 day of training and some even 7 days or more – cf. Chart 24. There is an absolute balance between the lawyers, since the results of the survey present an identical number of respondents that consider training on the CFR as very important or important (41%) and those who consider that the training is little important or not important at all (41%) – cf. Chart 23.

Chart 23 – Importance of attending training on the Charter

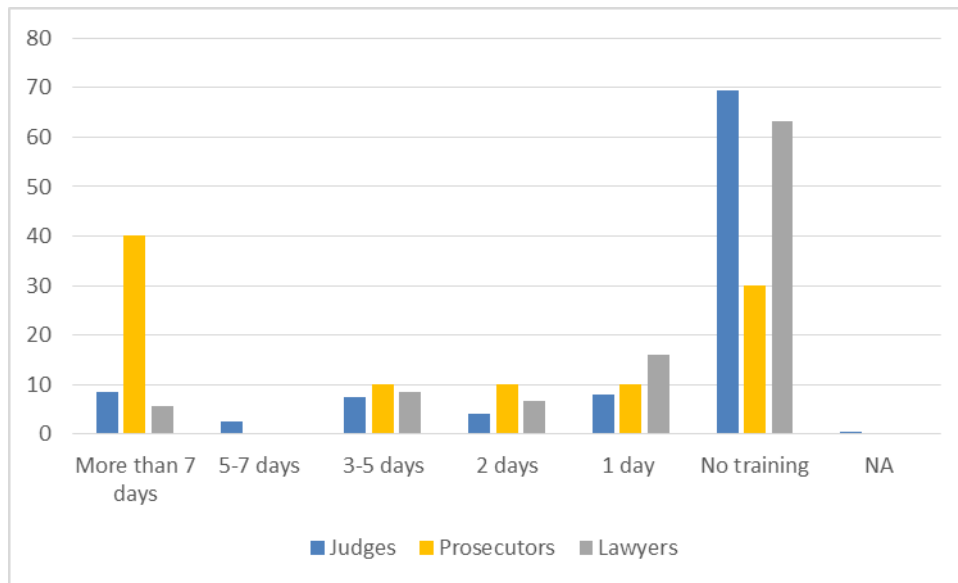


Source: IDHC.

More than half of the lawyers who responded to the survey (63%) have never received training on the Charter – cf. Chart 24. Among the causes that are pointed out for this fact, we highlight that 79% of people say they have not received training by the lack of programs related to the Charter – cf. Chart 25. In addition, we see this perception reinforced by the fact that in some comments left in open responses to the survey, there is a certain degree of confusion between the CFR and the European Convention on Human Rights (ECHR), which can also be extrapolated in the confusion that occurs between the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR). With respect to the prosecutors, as already stated, 70% of the respondents have already received to some degree training on the CFR, 40% of them for more than 7 days – cf. Chart 24. The three people who have not received training (30%) indicate that it has been due to the lack of training programmes on the CFR – cf. Chart 25. With respect to the judges, in general, we detect that the most requested training needs are related to introductory and general aspects of the Charter, which is quite logical if we take into account that a great majority of the respondents, specifically 69%, have never received training on CFR – cf. Chart 24. We can also point out a special interest in relation to the most practical aspects of application of the CFR that allow the professionals of the judiciary, a practical application of the Charter, beyond the basic principles. Among the judges who claim they never received training, a large majority (61%) say that the reason is that there were no training programmes related to the CFR – cf. Chart 25.

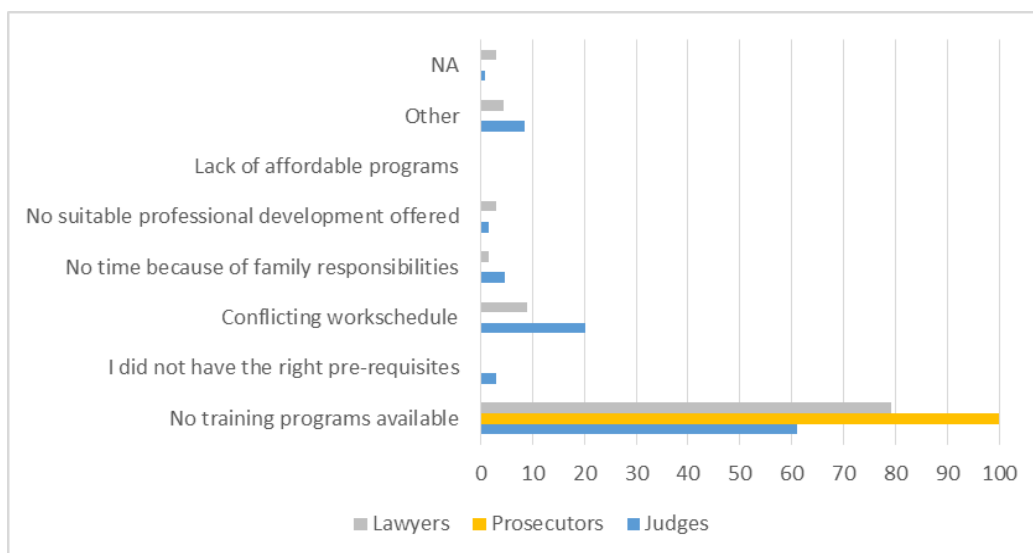
Therefore, taking into account that a majority of the total number of legal actors that answered the survey said that they had never received training on the Charter and that, among them, the majority said that the reason was that there were no training programs on the CFR, we can conclude that there is a training deficit on the Charter.

Charter 24 – Number of days of training on the Charter



Source: IDHC.

Chart 25 – Reasons for not attending training on the Charter

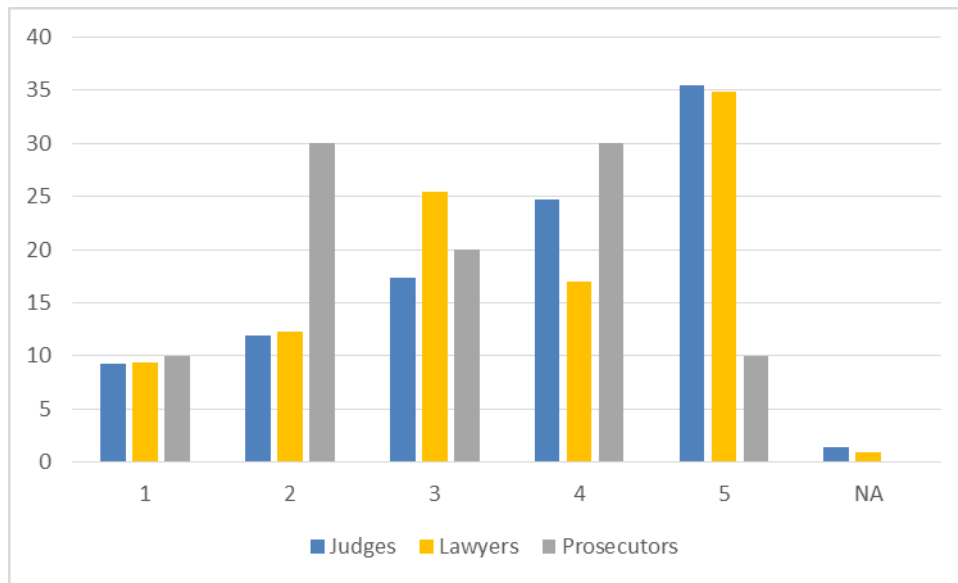


Source: IDHC.

The previous training sessions on the Charter attended by the respondents focused on a diversity of topics. We highlight the following: the scope of application of the CFR; the relationship between the CFR and other systems for the protection of fundamental rights; preliminary ruling; conflicts between national law and EU law; the European Court of Human Rights and the Charter; human rights and fundamental rights; right of asylum; refugees; access to justice; freedom of expression; social rights; family law; environmental law; labour law; data protection; consumer rights; the fight against xenophobia, racism and discrimination; gender equality; *non bis in idem*; international cooperation; the enforcement of judgments.

Regarding the knowledge on the CFR and the access and use of materials and practical consultation of documents related to the implementation of this instrument, we find, among the prosecutors, an equal distribution between people who have high and low level of knowledge (40%) – cf. Chart 26 – with half of the respondents stating that their access and use of materials and documents on the subject as low or very low – cf. Chart 27. With respect to the lawyers, the majority evaluates their level of knowledge on the CFR as very low (35%) – cf. Chart 26 – with only 25% of the respondents considering their access and use of documents related to the implementation of the Charter high – cf. Chart 27. The same low level of knowledge on the CFR can also be identified among the judges, with more than half of the respondents (54%) stating to have low or very low expertise on the subject – cf. Chart 26 – that matches the very low access and use of the documents and materials available – cf. Chart 27.

Chart 26 – Level of knowledge on the Charter



Source: IDHC.

Chart 27 – Access and use of materials on the Charter



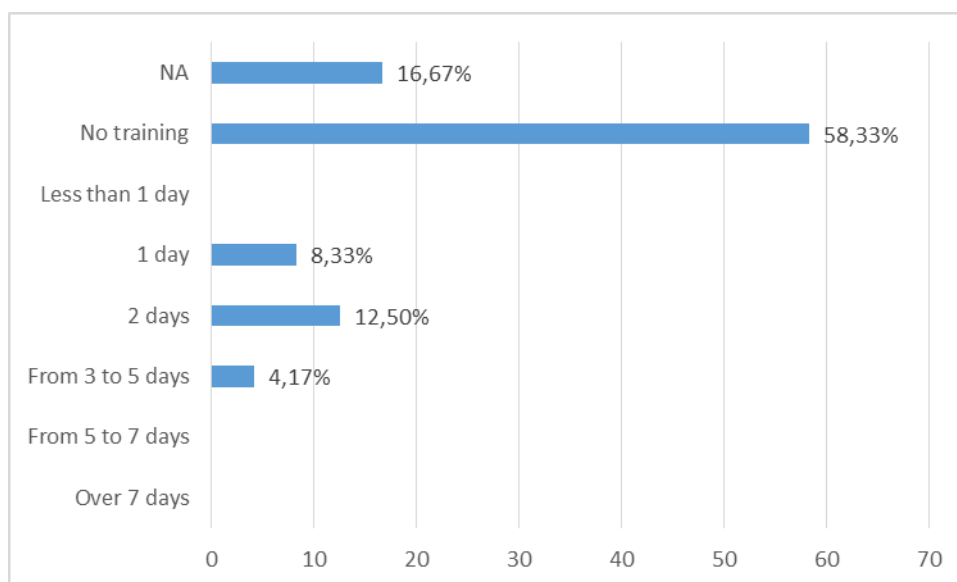
Source: IDHC.

We can conclude that the formative level of the CFR is generally low and there is a lack of specific training offer focusing on the Charter. According to the results analysed, the interest of the training focuses on general aspects of the Charter (scope of application or rights and principles guaranteed by the Charter), as well as more practical aspects (for example, the competence of the application of the Charter at the national level by the national courts, when and how to apply the Charter). Therefore, the training needs detected are directed mainly to professionals who have never received training or who have received little. According to the survey, the training priorities are focused on the general aspects of the Charter and, above all, on knowing what practical applications the Charter can have in the daily work of legal actors as professionals of the judiciary.

Poland

Most of the respondents never attended training on the Charter (58.33%). The training of those who attended generally lasted one or two days – cf. Chart 28.

Chart 28 – Duration of training on the Charter



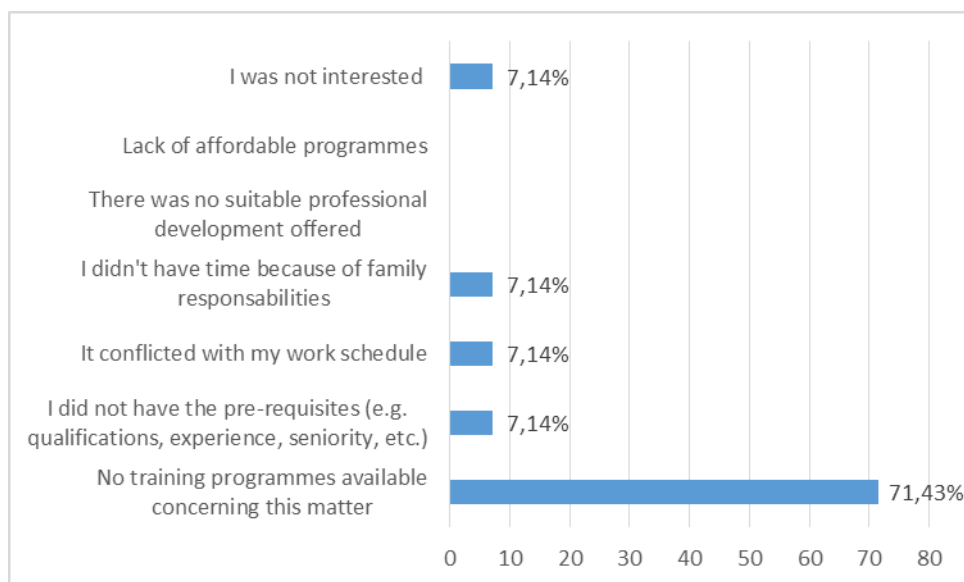
Source: US.

The survey results allow us to observe the participation of the respondents in different types of training on the Charter. Among them we have: the general principles of the

Charter in the context of the systems of protection of human rights; study visits to the European Court of Justice, with a brief course related to the application of the Charter of Fundamental Rights; courses on the rights and the procedure for the limitation of personal freedom; implementation of the Charter of Fundamental Rights; social rights, right to the protection against the termination of labour, right to search for a job. We had one respondent that tried to give a more complete answer to the question and mentioned the whole range of topics covered by a course, namely: right to a fair trial, right to freedom and security; protection of personal data, freedom of thought, freedom of information and opinion; freedom of artistic production and scientific research; right to education; freedom to search for a job; freedom of exercising an economic activity; right of property (including intellectual freedom), prohibition of discrimination. In this section, one respondent also expressed interest in the issues of discrimination and equal treatment, as well as the need for a more “practical training concerning the Charter of Fundamental Rights of European Union”. This opinion has been the object of further reflections, namely for the development of an appropriate training methodology.

There are many reasons for the failure to participate in training on the Charter – cf. Chart 29. The main reason for the lack of participation of the respondents on training has been the lack of relevant programmes on the Charter (71.43%). This lack of offer of training may also be motivated by the decisions of the authorities responsible for the training, and related with the quantity of administrative duties.

Chart 29 – Reasons for not attending training on the Charter

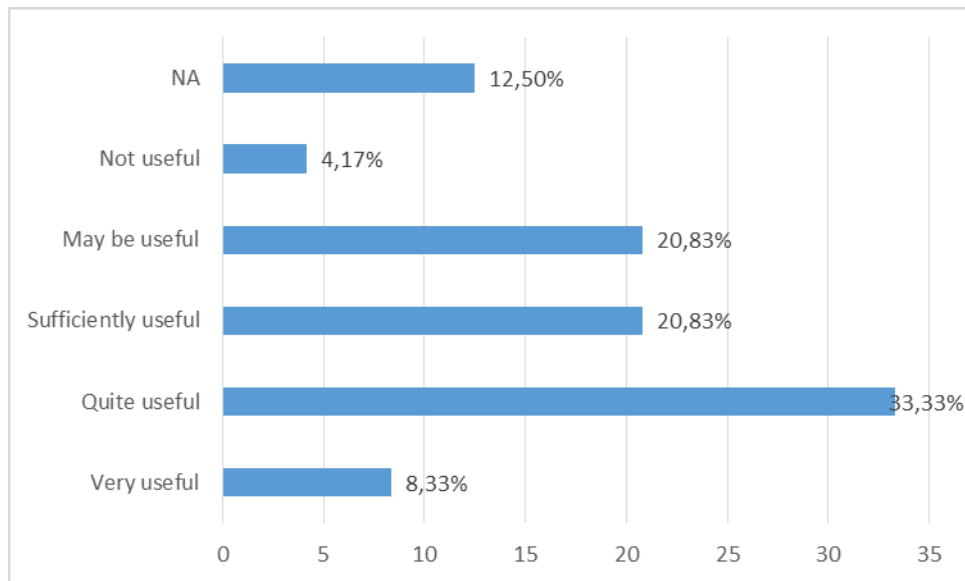


Source: US.

When questioned about the type of rights the respondents have more difficulties in applying, we only had one answer, underlying the difficulty to apply rights concerning economic freedom.

On the question regarding the utility to have courses on the Charter, the answers are differentiated – cf. Chart 30. A significant proportion of the respondents considered that the training on the Charter might be quite useful (33.33%). However, the majority of respondents (41.66%) had the joint perception that the courses are only sufficiently useful or may be useful. These results made use reflect on the need for an adequate training methodology.

Chart 30 – Importance of the training on the Charter



Source: US.

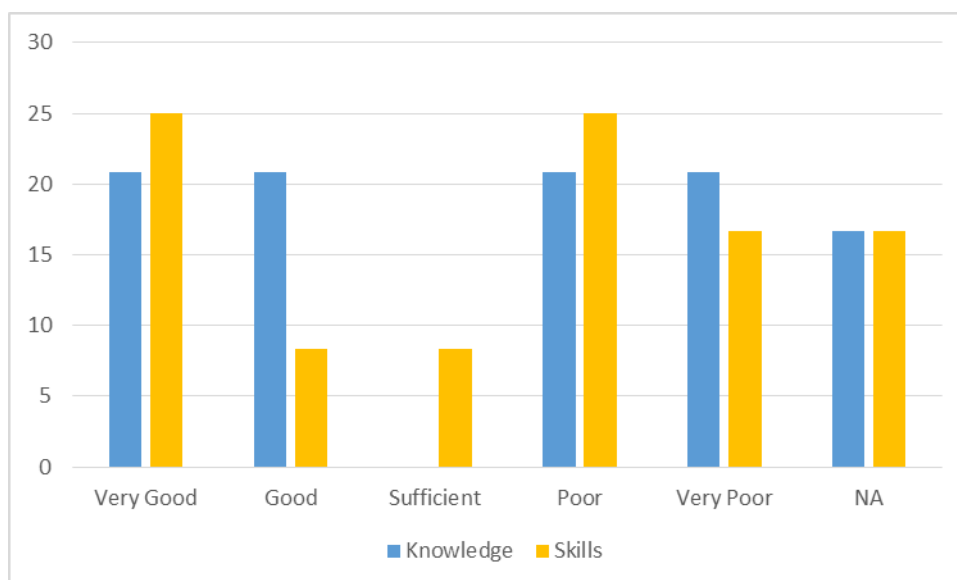
Among the judges, only four of them have raised or thought about raising a prejudicial question before the Court of Justice of the European Union. When we try to correlate this information with the interest of having courses on the Charter, we are able to conclude that among the four judges, two of them considered the implementation of training on fundamental rights as “very useful”, one of them as “quite useful” and one of them as “sufficiently useful”. This high correlation between the judges who raised or thought about raising a prejudicial question and the positive perception of the training on the CFR is a further evidence of its importance. For this reason the opinion that the importance of the implementation of a course would only be “sufficient”, highlights once more the importance of thinking of an appropriate method for the course.

This is also because the number of trainings on fundamental rights seems insufficient.

The respondents that consider having a good knowledge on the Charter and the ones that consider having a bad knowledge are equal (41.66%) – cf. Chart 31. This is a critical concern for the organisation of training. Indeed, we have to kind of separate preferences: the ones who prefer specialized sessions and the ones who prefer general sessions. Judicial actors may find irrelevant the participation on the courses they do

not consider appropriate for them. In order to stimulate the active participation of legal actors, we implemented separate courses for judges, lawyers and prosecutors.

Chart 31 – Comparing self-evaluation in knowledge and skills on CFR



Source: US.

Concerning the proposals from the respondents we have specific problems, and in one case articulated and general demands: a) contradiction between the Charter and other international obligations; b) relations between the protection of human rights and the operation of courts of first instance; c) CFR in the questions for a preliminary ruling; d) access to court, equal treatment, justice of the CJEU case law; e) an overview of the judgments of European courts and national courts, which are based on the provisions of the Charter of Fundamental Rights; f) freedom of assembly and association, freedom of art and scientific research, right to education, freedom to choose an occupation and the right to engage in any EU country, freedom to run a business, ownership (including intellectual property), the right to asylum, protection in the event of expulsion and extradition.

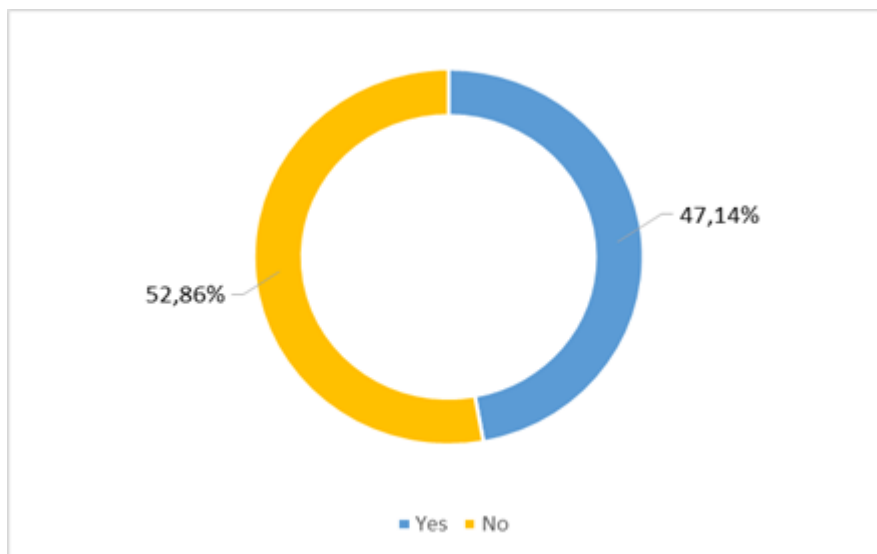
Of special relevance for the further reflection are the methodological suggestions. We have, indeed: a) training in the form of workshops seems to be the most appropriate

b) in the organization of the trainings, first of all the judges of appellate and district courts should take part in them. The use of KPP is visible in the judgments of lower courts, in which junior judges most often participate in international internships. In decisions of appellate and district courts of appeal, there are no references to the CJEU jurisprudence or EU CPP, even if they are cited in an ornamental manner, often incompatible with the factual and legal status of the case. Both these methodological reflection have been the object of a specific analysis and consideration.

The Netherlands

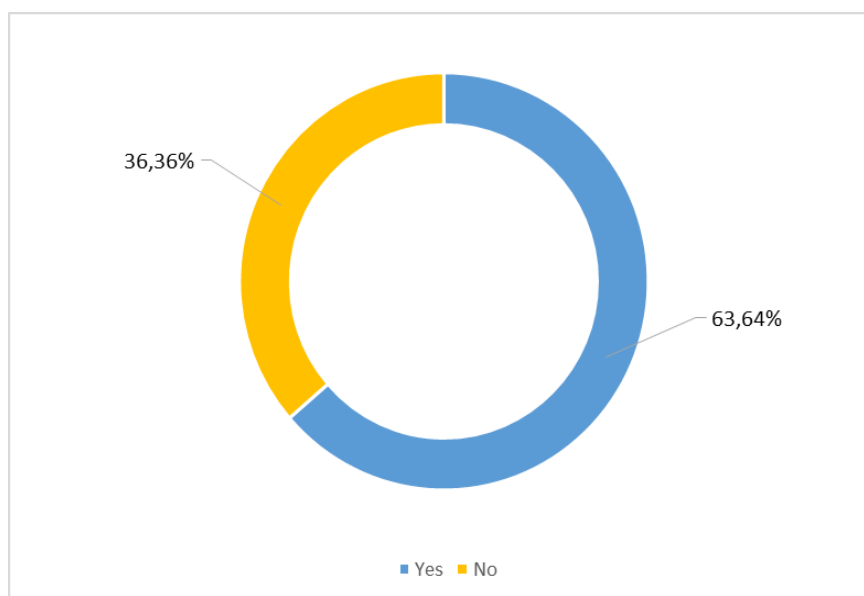
Nearly half of the respondents had experience in dealing with the applicability of the Charter in their daily work (47.14%) – cf. Charter 32 – and 63.64% of them experienced difficulties in this applicability – cf. Charter 33.

Chart 32 – Experience in dealing with the applicability of the Charter



Source: UU.

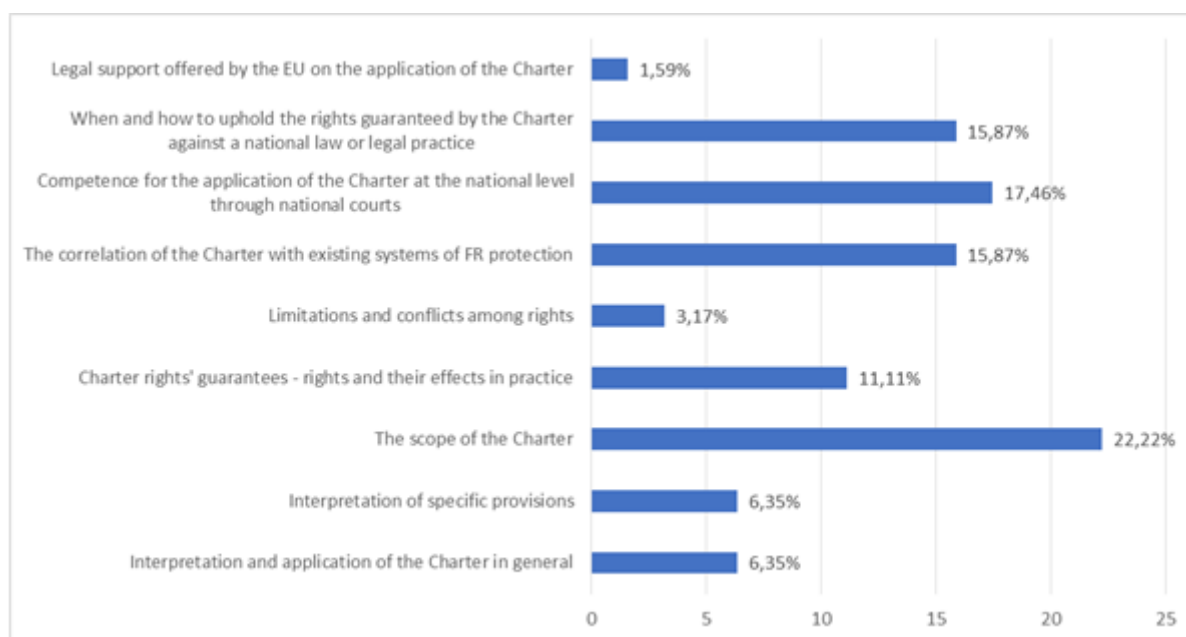
Chart 33 – Difficulties concerning the applicability of the Charter



Source: UU.

The matters that caused the most difficulties were: the scope of the Charter, Charter rights and their effects in practice, the correlation of the Charter with existing systems of Fundamental Rights protection, the competence of national courts for application of the Charter and the upholding of rights guaranteed by the Charter against a national law or legal practice – cf. Charter 34.

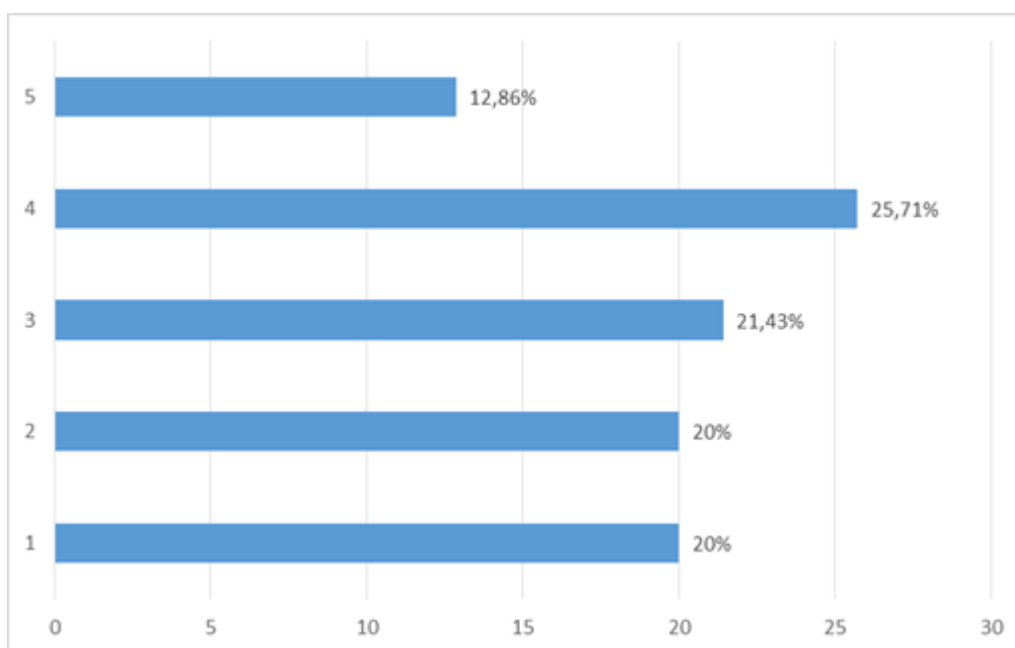
Chart 34 – Matters that caused more difficulty



Source: UU.

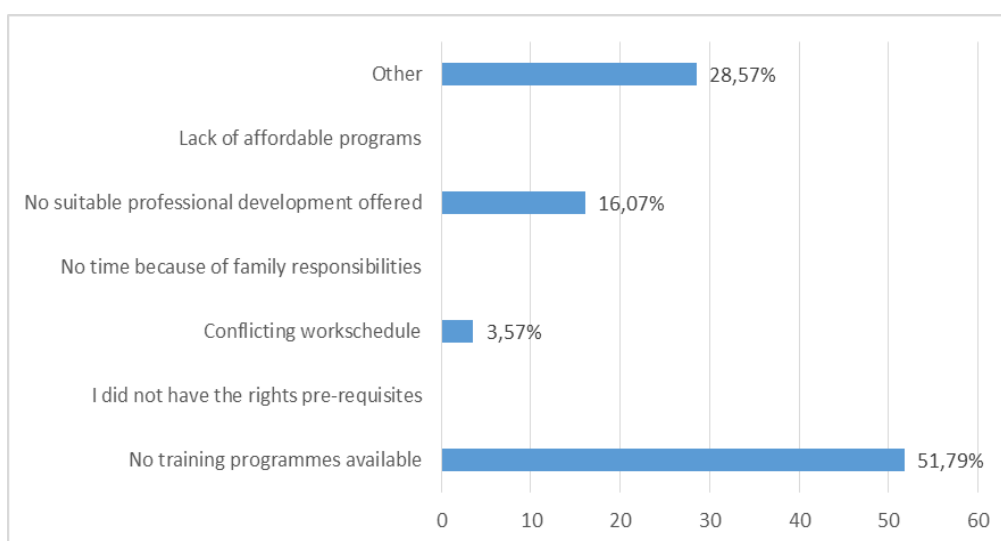
The number of respondents that indicated the importance to enrol in training on the application of the Charter as high (1 or 2 on a scale from 1-5) was 40% – cf. Chart 34. Most of the respondents (67.14%) never attended training on the Charter before – cf. Chart 36. Reported reason for this is the lack of availability of suitable training programmes – cf. Chart 35. The respondents that did attend training on the CFR only attended a few days of training (3 days or less) – cf. Chart 36. These trainings were often general courses on EU law wherein the Charter was only slightly introduced. However, some respondents participated in training programs that dealt with specific topics on the Charter. These topics were the scope of the Charter and the relation between the Charter and the ECHR.

Chart 35 – Importance of attending training on the Charter



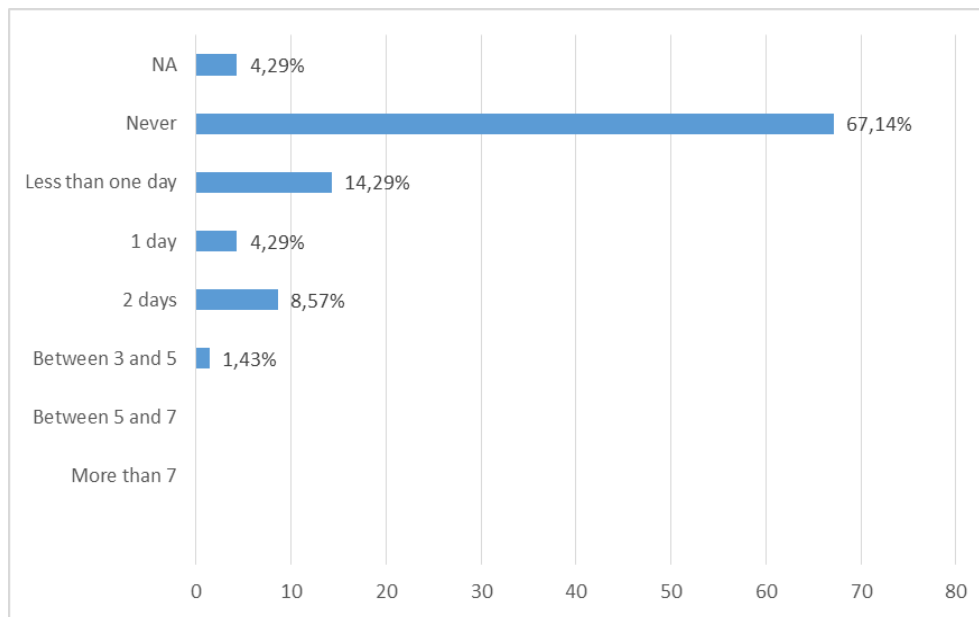
Source: UU.

Chart 36 – Reasons preventing the participation in training on the Charter



Source: UU.

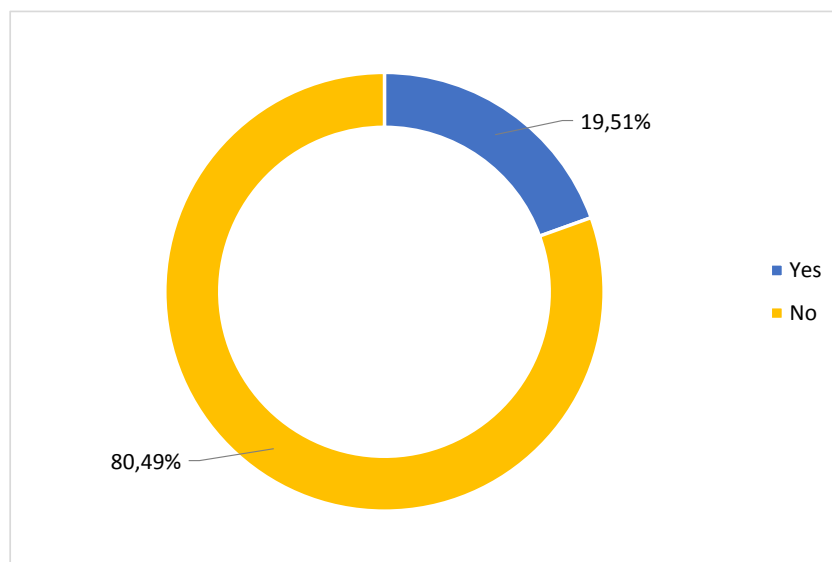
Chart 37 – Days of attended training on the Charter



Source: UU.

Only 8 of the 41 judges that filled out the survey have raised or considered raising a prejudicial question about the applicability of the Charter – cf. Chart 38.

Chart 38 – Prejudicial question

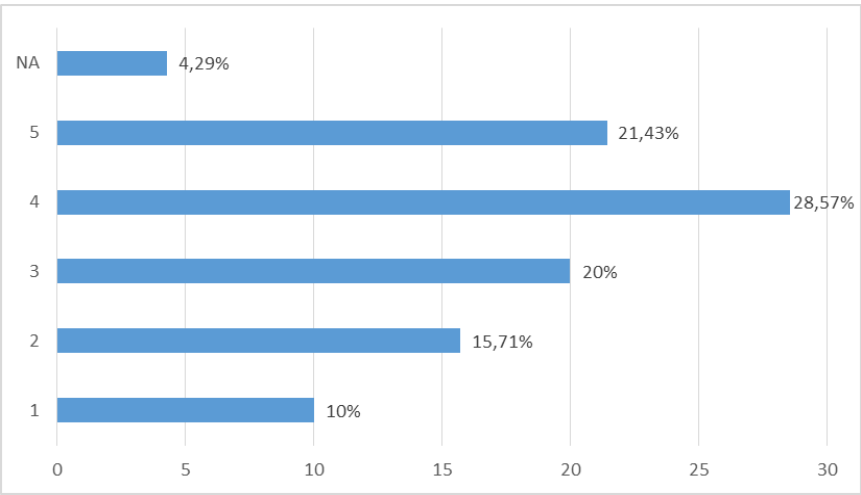


Source: UU.

The questions concerning the degree of knowledge and the degree of use of materials on the implementation of the Charter did not produce useful outcomes. Reason for

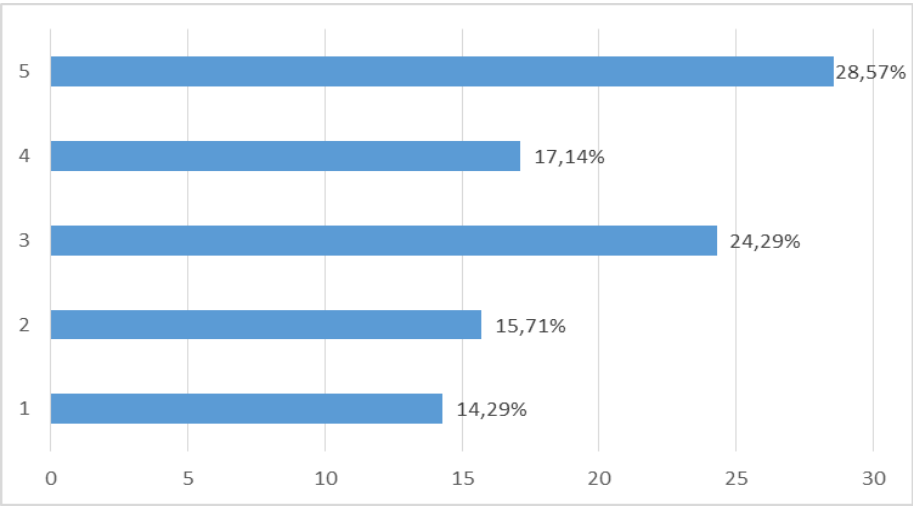
this is that the respondents were extremely divided in the degrees they indicated – cf. Charts 39 and 40.

Chart 39 – Degree of knowledge of materials on the implementation of the Charter



Source: UU.

Chart 40 – Degree of use of materials on the implementation of the Charter



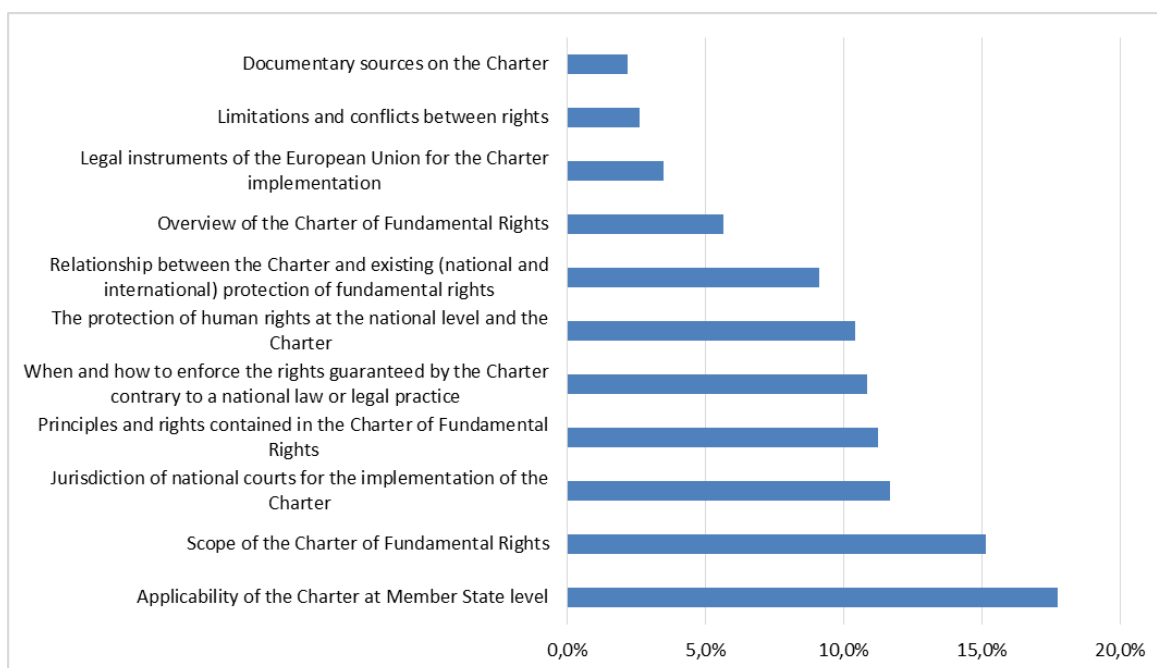
Source: UU.

Relevant themes to include in the training on the Charter

Portugal

A question was addressed to all judicial actors, irrespective of their experience in applying the Charter, on the topics considered most relevant to the training on the Charter of Fundamental Rights, providing a list of topics, with the largest number of respondents referred to in Chart 41.

Chart 41 – Topics relevant to training



Fonte: CES/OPJ.

As can be seen in the chart, documental sources on the CFR, limitations and conflicts among rights and the EU's legal instruments of support for the implementation of the Charter are the themes that have gained the most consensus as to their relevance.

The analysis of the answers to this question did not reveal significant differences between the judicial actors, that is to say, the statistical cross between the topics

considered most important and the profession of the respondents resulted in the identification of very similar trends. As an example, the order of identification of the first four categories represented in the previous chart was the same in the answers obtained among the judges, prosecutors and lawyers.

The fact that we did not find significant differences in the answers of each of the professional bodies, considering the various questions, was one of the reasons that justified the option to include a common core in the classroom training programme to be taught at an early stage. The second reason is that, as mentioned above, the great majority had no experience in the implementation of the Charter or training in this area. A third reason arises from the importance we assign, as a training methodology, to an integrated perspective of professional practice, thus valuing interdisciplinary reflection.

In addition to the main themes to be included in the training program, the interviewed judicial actors were also asked to identify other topics that they considered relevant in the training on the Charter of Fundamental Rights. Being an open-ended question, very different answers were obtained. Below are the main topics identified by respondents¹:

- Relationship between domestic law and the Charter on the level of protection of human rights;
- Articulation between the Charter and national law: areas where it is most innovative;
- National monitoring of the application of the principles of the Charter;
- National and Community jurisprudence for implementing the Charter: study of relevant concrete cases;
- The application of the Charter by the CJEU;
- The Charter of Fundamental Rights in the face of the refugee crisis and the future of the European project;

¹ We excluded the topics that repeated the themes identified in the previous question and, naturally, the topics that are not included in the scope of this training.

- The relationship between the EU Charter of Fundamental Rights, the ECHR and the European Social Charter;
- The Charter of Fundamental Rights and its conformity with competition law: limitation or appropriateness?
- The Charter of Fundamental Rights as a limit to the fiscal sovereignty of States.

Additionally, the request for identifying other topics considered relevant in the framework of the Charter training resulted in the following contributions:

- Understand the reasons for the poor use of the Charter of Fundamental Rights by the courts;
- Discuss the relevance of the Charter, considering that many of the problems are solved using constitutional rights and existing Conventions;
- Addressing fundamental rights, through an articulated reflection, including understanding the CRP, the ECHR and the CDFUE, underlining the principles.

Spain

Regarding the topics that the respondents prioritize for possible training on the CFR, the recurrent issues and, therefore, the ones to consider in the preparation of the training programme in the framework of this project are quite basic. According to the results of the survey, the training interests are focused on general aspects of the Charter, and, above all, on knowing what practical applications the Charter has in their daily work as professionals of the judiciary. This is mainly because the majority of the respondents never received training (or have received little training) on the Charter.

We highlight the following themes:

- Rights and principles guaranteed by the Charter;
- The scope of application of the Charter;
- The competence of national courts to apply the Charter at national level;
- The applicability of the Charter at national level;

- The relationship between the Charter and other systems for the protection of fundamental rights;
- When and how to defend the rights guaranteed by the Charter against national law or national practice;
- The protection of human rights at national level and the Charter;
- Vision and general principles of the Charter;
- Limitations and conflicts of rights;

Other themes considered as a priority (in no particular order) were:

- The relationship between the Charter and the European Social Charter;
- Case-law of the ECtHR and the CJEU's competences on the interpretation of the Charter;
- The relationship between the Charter and the European Convention on Human Rights;
- Procedure and practical materials to make a reference for a preliminary ruling on the CFR;
- The Charter and asylum and refugee law;
- Human rights of second generation;
- The Charter and the right of access to justice and the protection of victims;
- The Charter and data protection;
- Examples and practical cases of the application of the CFR;
- The Charter and international cooperation in criminal matters.

Poland

Concerning the proposals from the respondents we have specific problems, and in one case articulated and general demands: a) contradiction between the Charter and other international obligations; b) relations between the protection of human rights and the operation of courts of first instance; c) CFR in the questions for a preliminary ruling; d) access to court, equal treatment, justice of the CJEU case law; e) an overview of the judgments of European courts and national courts, which are based on the provisions of the Charter of Fundamental Rights; f) freedom of assembly and association.

The Netherlands

According to the survey results, in new training programs on the Charter respondents would like to receive information on the following topics: the scope of the Charter; horizontal effect; ex officio application; and the relation of the Charter to the ECHR. Most of the respondents also indicated that courses wherein the application of the Charter in a specific field of law is dealt with are welcome. In these courses it would be preferred if concrete cases and examples of the applicability of the Charter are up for discussion.

Due to the low number of respondents, the survey results do not deliver enough useful information regarding training needs and knowledge needs of the legal professionals in relation to the Charter. In order to gain additional useful information, the researchers decided to measure the needs and knowledge on the Charter in a more informal way. To this end, interviews were held with individual judges and lawyers. Unfortunately, it was not possible to have interviews with public prosecutors.

From the interviews held with judges, it results that they want to gain knowledge on the following topics:

- Horizontal direct effect of the Charter;
- Ex officio judgements of the Charter.

In addition, judges have the following needs concerning the training:

- Training should be practice oriented and should be focused on the specific cases judges have to deal with in their daily practice;

- Lectures and classroom training should not be general lectures on the Charter. Training should, on the other hand, concentrate on the role of the Charter in specific fields of law (e.g. civil law, administrative law, migration law, criminal law);
- They also argued that judges, lawyers and public prosecutors should not be mixed in the trainings. They understood that judges would not feel comfortable to speak freely among other judicial actors.

From the interviews held with lawyers, it results that they want to gain knowledge on the following topics concerning the Charter:

- The added value of the Charter, specifically in relation to the ECHR;
- The scope of the Charter: when is article 51 implementation at stake and can the Charter be invoked?

Lawyers have the following notes and needs concerning the trainings:

- Training should be practice oriented and should be focused on the specific cases lawyers deal with in their daily practice. In contrast to the judges, lawyers prefer a general course on the Charter rather than a course focused on the role of the Charter in specific areas of law. They do, however, consider it useful to discuss specific cases that are focused on certain areas of law;
- Lawyers prefer to have training spread over more than two days (they rather have 4 X 4 hours than 2 X 8 hours of training);
- It would be appreciated if lawyers could gain Permanent Education Points (PE-points) for the training. Lawyers are obliged to gain a certain number of PE-points every year in order to stay up to date with legal knowledge.

Conclusion

The implementation of an online survey was an instrumental methodology to assess the training needs of the judicial actors and, therefore, to develop a successful training programme on the Charter, tailored to the needs of each profession. In order to obtain the best results, the collaboration of judicial institutions such as the High Council of the Judiciary, the Prosecutor General's Office and the Bar Association is essential. The high number of responses obtained in Spain and in Portugal allowed the CFR team to reach important conclusions. However, and even though the number of responses was lower in the Netherlands and in Poland and, thus, less representative of each profession, the researchers were able to gather some important contributions which were decisive in the design of the training programme, namely regarding the training contents and the training methodology.

From the survey results, it is clear that, in general, the majority of judicial actors never received any training on the Charter. In the very few cases they have, there are some differences between the partner countries. In Portugal, the previous training on the Charter was, for the most part, of a general nature. Similarly, in the Netherlands, these trainings were often general courses on EU law wherein the Charter was only slightly introduced, even though some participants frequented training programmes that dealt with more specific topics, such as the scope of the CFR and the relationship between the Charter and the ECHR. In other partner countries, such as Spain and Poland, it also versed on the relationship of the CFR with specific rights and fields of law. The main reason for not attending training on the CFR was, by large, the lack of training offer. As such, we can identify a training deficit, which is particularly damaging if we recall the importance of the Charter in the protection of fundamental rights in the EU. Therefore, the implementation of a comprehensive training programme aimed at judges, lawyers and prosecutors that aims to promote the knowledge and the exchange of experiences and good practices on the Charter is all the more relevant.

The survey provided important information on the topics the respondents would like to have training and, as such, allowed the selection of an appropriate training content. In Portugal, we can highlight the following topics: documental sources on the Charter, limitations and conflicts among rights and the EU's legal instruments of support for the implementation of the Charter. In Spain, the recurrent issues are focused on general aspects of the Charter: rights and principles guaranteed by the Charter; the scope of application of the Charter; the competence of national courts to apply the Charter at national level; the applicability of the Charter at national level, etc. In the Netherlands, according to the survey results, the respondents would like to receive training on the following topics: the scope of the Charter, horizontal effect, ex officio application and the relationship of the Charter with the ECHR. Most of the respondents also referred that training sessions wherein the application of the Charter in a specific field of law is dealt with are welcome.

Annex

Survey

TRAINING NEEDS ON THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

Dear Participant,

The project "The Charter of Fundamental Rights of the European Union in action" focuses on the dissemination of the scope of the CFR and on the provision of tools for judges, prosecutors and lawyers to promote better knowledge and application of the CFR. Combining lectures and practical workshops (classroom training and e-learning) the judicial training will cover the development of the protection of fundamental rights in the European Union focusing on the CFR. This survey has an instrumental function for knowing the training needs on this subject, among the judicial actors in all partner countries – Portugal, Spain, Netherlands and Poland. The survey intends to collect only data on training needs.

The survey is brief and takes about 10 minutes to complete. We ask you to please fill it and click "submit" at the end. This survey is totally anonymous. No personal sensitive data from the participants will be collected. Access and fill are anonymous and we also guarantee confidentiality in the further data analysis.

If you have any further doubts, please do not hesitate to contact us:

Centre for Social Studies

Email: opj@ces.uc.pt

Tel.: +351 239 855 570

Your participation is very important to this project.

Thank you very much for your contribution.

1. Your gender:

☐ Male

☐ Female

2. To which professional body do you belong?

☐ Judge

☐ Public Prosecutor

☐ Lawyer

2.1. Please indicate the areas of law (ex. family law, labour law, administrative law, civil law, etc.) in which you currently perform functions.

2.2. If you are a judge or a public prosecutor, please indicate the type of court or public prosecutor organ (ex. county court, criminal court, appeal court, etc.) in which you currently perform functions.

3. For how many years have you been a legal professional?

- ☐ 2 years or less
- ☐ 3 to 5 years
- ☐ 6 to 10 years
- ☐ More than 10 years

4. In the exercise of your professional activity, have you ever dealt with the applicability or application of the EU Charter of Fundamental Rights?

- ☐ Yes
- ☐ No

4.1. If you answered “yes” to the previous question, did you have difficulties concerning the interpretation and application of the Charter?

- ☐ Yes
- ☐ No

4.2. If you answered “yes” to the previous question, please indicate in what kind of the matters did you find more difficulties:

- ☐ Interpretation and application of the Charter in general
- ☐ Interpretation on its provisions. Please, specify in what kind of rights did you find more difficulties

- ☐ Scope of the Charter of Fundamental Rights
- ☐ Charter rights’ guarantees – rights and their effects in practice

- ☐ Limitations and conflicts among rights
- ☐ The correlation of the Charter with existing systems of Fundamental Rights Protection
- ☐ Competence for the application of the Charter at the national level through national courts
- ☐ When and how to uphold the rights guaranteed by the Charter against a national law or legal practice
- ☐ Legal support offered by the EU on the application of the Charter

5. If you are a judge, have you ever raised or considered raising a prejudicial question to the Court of Justice of the European Union considering explanation of the Charter of Fundamental Rights?

- ☐ Yes
- ☐ No

6. On a scale of 1 to 5 (1 is high and 5 is low), please indicate the importance to enroll in training about the application of the EU Charter of Fundamental Rights.

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

7. Since you have been a legal professional, how many days of training did you attend, if you do, concerning the EU Charter of Fundamental Rights?

- ☐ More than 7
- ☐ Between 5 and 7
- ☐ Between 3 and 5
- ☐ 2 days
- ☐ 1 day
- ☐ Never

7.1. If you do, please specify the main topics of that/those training program(s).

7.2. If you don't, which of the following reasons best explain what prevented you from participating in training concerning the EU Charter of Fundamental Rights.

- ☐ There weren't training programs concerning this matter
 - ☐ I did not have the pre-requisites (e.g. qualifications, experience, seniority, etc.)
 - ☐ It conflicted with my work schedule
 - ☐ I didn't have time because of family responsibilities
 - ☐ There was no suitable professional development offered
 - ☐ Lack of affordable programs
 - ☐ Other (please specify):
-

8. On a scale of 1 to 5 (1 is high and 5 is low), please indicate your degree of knowledge of materials or practical consultation documents on the implementation of the Charter.

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

9. On a scale of 1 to 5 (1 is high and 5 is low), please indicate your degree of use of materials or practical consultation documents on the implementation of the Charter.

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

10. Please select the topics for training on the EU Charter of Fundamental Rights you would like to receive, between the followings (rank in order of importance using 1 as most important and 12 as least important).

- ☐ General overview of the Charter
- ☐ The Scope of the Charter of Fundamental Rights

- ☐ Rights and principles guaranteed by the Charter of Fundamental Rights
- ☐ Limitations and conflicts among rights
- ☐ The relation of the Charter with existing systems of Fundamental Rights Protection
- ☐ Human Rights Protection at the National Level and the Charter
- ☐ Applicability of the CFR at the Member State Level
- ☐ Competence for the application of the CFR at the national level through national courts
- ☐ When and how to uphold the rights guaranteed by the Charter against a national law or legal practice
- ☐ Legal support offered by the EU on the application of the Charter
- ☐ Documental sources for legal practitioners on the EU Charter

11. Please write down other topics for training on the EU Charter of Fundamental Rights that you would like to receive.

12. Please add any other comments or suggestions about judicial or advocate's training needs.

Thank you for completing this survey.