

Θέμα : Ομιλία για το Ν. Δελχί

Εσωκλείονται το κείμενο της ομιλίας με δισκέτα, το κείμενο του Χάρτη Θεμελιωδών Δικαιωμάτων σε αγγλική γλώσσα και το υλικό που είχε αποστείλει ο Σπύρος Σημίτης.

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Θέμα : THE CHARTER OF FUNDAMENTAL RIGHTS

I

Today, I would like to share with you some thoughts on the Charter of the Fundamental Rights of the European Union. Before that, can I say how immensely pleased I am to be here with you and how honored to have the opportunity to speak to you at this prestigious University. I am delighted to be in this dynamic country which is emerging, once again, as a global power and as a crossroad in Asia. A country - the largest democracy in the world - with whom Greece - the oldest democracy in the world - share common values as well as ancient and historical bonds.

II

In a modern Republic the respect of fundamental rights and freedoms is a constructive element for its structure and function of. Rights constitute the essence of democracy, being an absolute value, inherent to human nature. Moreover, the quality of democracy is determined by the way the state promotes the implementation of rights. Fundamental rights are also inherent to the development of the individual's freedom, to his participation in social life but also to every choice of his personal autonomy.

In a world that is constantly and rapidly changing, with the radical developments of technology and the internationalization of the markets, the discussion about rights is part of the every day agenda. The globalization in the economic field creates the danger of market supremacy with major consequences for social cohesion. Thus, the respect and promotion of rights suggests a principle on the basis of which any society should be organized, in order to deal with the new developments. Fundamental rights, therefore, have today, as never before, essential and central importance.

III

The need to recognize and establish a system of protection of fundamental rights in the European Union became actual when the Economic Community began transforming to a political Union. As it gradually extended its competence, the deficit in the protection of rights was more apparent. The duty to respect and implement fundamental rights in all the Union policies was introduced by the Maastricht and Amsterdam Treaties. Meanwhile, the European Court of Justice had acknowledged that duty in its jurisprudence by making reference to the European Convention of Human Rights and to the common constitutional traditions of the member-states.

The mere reference though, of the respect for fundamental rights in a number of Union documents did not create a clear picture for citizens. It, indeed, did not enable them to be aware of and exercise their rights. In consequence, it was not easy for citizens to identify themselves with policies and support activities as being a part of a political Union. Thus, the Cologne European Summit in 1999 concluded that the respect of fundamental rights was a necessary condition for the further evolution of the Union. Rights had to be recognized explicitly and be visible for everybody.

IV

The Cologne Conclusions entrusted the drafting of the Charter of Fundamental Rights to a Convention of representatives of the heads of states and governments, the European and National Parliaments and the European Commission. The Convention committed to an open drafting process where every interested party, like non-governmental organizations and future member-states, could express their views. The wording of the Charter though reflects the difficulties in reaching a broad consensus on issues such as the provisions for social rights. The Convention completed its works last October and submitted the document first to the Biarritz and then to the Nice European Summit. The European Council welcomed the proclamation of the Charter and indicated that the Charter's binding effect will be decided at a later stage.

The Charter indeed achieves the purpose that dictated its drafting. Everybody may now look for and locate their rights in a single and concise document. The

document combines civil, political, social and societal rights deriving from a variety of international, European and national sources. Nevertheless, fundamental rights are introduced in a way to be applicable and efficient for the community legal order, since the Charter will function as an autonomous legal document. This suggests that the interpretation and the jurisprudence based on the Charter will develop its own special dynamic.

The last part of the Charter, the General Provisions, provide adequate solutions for a series of legal issues that will be raised by acquiring binding effect. The final clauses, among others, : - underline the respect for the autonomy of European Union law, - prescribe the relation between the Charter and the European Convention of Human Rights, and stress that it will not provoke a constitutional revision in the member-states.

It would be useful at this point to examine briefly the relation of the Charter with the European Convention of Human Rights. The latter, along with its Protocols and the jurisprudence of the European Court of Human Rights, is indeed the most integrated model for the protection of fundamental rights on a regional basis. Both the European Union Treaty (in article 6) and the European Court of Justice have already recognized it as a source for the protection of rights. The Charter on the other hand, was never intended to duplicate the wording and be a substitute for the ratification of the European Convention. The expectations and the final outcome went further, especially because subjects as social or economic rights were not touched by the European Convention. The Charter, on the other hand, had to deal with those issues because their importance for the integration of the Union.

V

If we look further in the content of the Charter, we first note that it comprises of fifty (50) articles which set out fundamental rights or freedoms. The structure of the document is an absolutely innovative element. The Charter is divided in seven chapters and the first six represent a value, not only of the European but also of the international legal tradition. The rights are grouped around dignity, freedom, equality,

solidarity, citizenship and justice. This structure was chosen because it follows and underlines the principle that rights are inseparable. It constitutes a new and forthcoming concept for the protection of human rights in the globalization era.

Fundamental economic and social rights are included alongside the traditional civil, political and citizens' rights. Certain rights are new and relate to bioethics and the protection of personal data, in an effort to respond to the latest developments of technology and science. Others are granted to specific groups of people such as children, workers, Union citizens and nationals of third countries residing in the Union.

The Charter was aimed to protect primarily EU-citizens *vis a vis* the actions of the Union institutions. It went further though and grants most of the rights irrespective to the individual's nationality or residence. As the European Court of Justice had repeatedly demonstrated in its decisions, the implementation of fundamental rights does - to a decisive extent - not depend on national origin. Obviously, neither the respect of the individual's dignity nor the right to equal treatment can be denied to non EU-nationals.

Furthermore, the structural changes of the European Union since the Amsterdam Treaty had made it apparent that the protection of fundamental rights should not be depended upon citizenship. The Union, when it deals with immigrants or asylum seekers, is hence limited by the duty to respect and guarantee fundamental rights of non EU-nationals as intensively as for EU-citizens. Thus, when a national of a third country enters the European Union is subject to unionwide applicable rules.

If we take a closer look at the provisions we will note that the rights recognized in the Charter mark, the Union's reaction to the changes in the society. Social rights are the most representing example for the current perception of fundamental rights. The EC-Treaty (art. 136) and the Community Social Charter (1989) had already stressed the importance of social rights and the need for their protection in relation with Union policies. Their inclusion in the Charter not only

promotes and guarantees their respect but also restores their relationship with political rights by not separating them.

For example, one of the decisive points of reference for employment relationships is the equality principle. Complemented by the anti-discrimination clause (article 21), it includes equality of opportunity and treatment and prohibition of discrimination because of disabilities, gender, age or union activities. Similarly, the right to bargain collectively and to resort to collective action (article 28) is also part of the freedom of association principle (article 12). Furthermore, the equal treatment of women (article 23) also implies the development of special policies for affirmative action.

Fundamental rights have been mainly affected by the developments in information and communication technology. The collection of personal information and the processing of personal data, the storage and retrieval of genetic data have resulted in major privacy infringements. The Charter explicitly recognized the individual's right to determine the processing of their data as a precondition for his participation and communication in a democratic society (article 8). The provisions on bioethics (article 3) within the dignity principle and environmental protection as part of solidarity (article 37) reflect the effort to take into account new developments. Finally, the provisions recognizing the right of access to Union documents (article 42) and the right to a sound administration (article 41) respond to the need for transparency in the Union.

VI

As to the main question regarding the binding effect of the Charter, for the time being the Heads of States welcomed the proclamation of the Charter. This decision indicates the commitment of the Union institutions to refer to the Charter. It is noteworthy that the Charter is already drafted in the form of a binding document. The General Provisions in the final chapter are enhancing the character of a legally binding text. Moreover, most of the European Institutions (Parliaments, Economic and Social Committee, Committee of Regions), the representatives of the Convention and,

last but not least, the civil society have already expressed their support to the mandatory character of the Charter.

The Charter is, in anyway, a document that gathers rights scattered in a number of sources of law, it makes them visible to everybody and easy to understand. It will serve as an inspirational guide for the implementation of fundamental rights by the European Court of Justice. It is anticipated that the Court will interpret the Charter as enshrining the general principles of Union law. The fact is certainly that the european citizen is, from now on, in a much better position to defend himself against any violation of his fundamental rights.

He can refer to the Charter in order to challenge any decision taken by Community institutions (European Commission, Council of Ministers of the European Union, European Parliament, etc.) and by Member States when implementing EU law. If, for example, a particular regulatory act in a member state, which derives from a Community directive, is not compatible with any fundamental right enshrined into the Charter, the interested citizen can bring the matter before a judge in his own country. If the judge is not convinced, he can request an interpretation from the Court of Justice of the European Communities.

VII

As for the candidate for membership in the Union countries, by accepting the acquired body of Union law, the so called “*acquis communautaire*”, they accept also to respect the principles of the Charter. Additionally, the Union’s perception of fundamental rights laid down in the Charter is expected to play a role in the external relations policy-making of the Union with third countries.

VIII

What is true is that the Charter shows explicitly that Europe is founded on common values. For the first time in EU’s history, a comprehensive, clear, concise

text, tangible to everybody, brings together the fundamental values, which are the quintessence of our civilization. Without any doubts, the Charter could become the sign of a politically unified Europe. It demonstrates that Europe is no longer just a single market.

It constitutes common ground to state that during the '90's the world we are living in has changed profoundly. We all realize our interdependence, the need to coexist peacefully and to cooperate in a spirit of friendship and solidarity. To this aim the European Union is making every possible effort, as is also my country being located in a turbulent region.

IX

More than fifty 50 years have passed from the Universal Declaration of Human Rights. Since then, major progress has been achieved for the freedom and the dignity of every person. On the other hand, it will be hypocritical if we do not agree that there is still a lot to be done to improve the position the man has within our societies in the age of globalization.

In the dawn of the new century, the Charter is the contribution and the response of the EU to what appears to be the biggest challenge of our times; to empower the dignity and the freedom of every person. It is worthwhile for this perspective to be discussed with a positive approach by all the peoples and all the members of the international society. The future of men and the fortune of mankind, in our full of challenges era, is certainly our greatest common interest.

Ladies and Gentlemen,

For a true partnership to work between European nations, between the European Union and India, between Greece and India, the creative, productive potential of our citizens must be unleashed. This, we have learned, both in Europe and India, is the one sure path for success.

Thank you very much.

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