

The Charter of Fundamental Rights

A landmark in the institutional development of the European Union

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I. The issue

The deficit of democracy that was already discussed since the 1980's, as well as the drawbacks noticed at the establishment of the social principle in the institutional structure of the European Union, are due to the fact that European integration is proceeding with different paces. While economic integration was always advancing, integration in the field of genuine politics by the promotion of institutions and actions at the core of the Union's powers, followed behind with difficulty. That explained the delay noted at the protection of the European citizen's rights and of every person living in the European Union towards community powers.

This gap became more apparent when European integration began expanding in new fields where citizen's rights were obviously and more intensely at stake. First the *Maastricht Treaty* (1991) and then the *Amsterdam Treaty* (1996) attempted to provide an answer to that challenge. The progress accomplished -especially by the Amsterdam Treaty- is not negligible.

Within this context, *the initiative for the drafting of a Charter of Fundamental Rights* was taken at the Cologne Summit of June 1999. The Summit mandate did not neglect to prescribe the framework for the articulation of the endeavour.

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II. The Convention

The accomplishment of this ambitious task was entrusted to the *Convention*, a body vested with an original form of democratic legitimacy both at national and at Union level, unprecedented in the history of the European Union. The Convention comprised by a representative of the Head of State or the Primeminister of every country, two representatives of each National Parliament, sixteen representatives of the European Parliament and a representative of the European Commission.

It is also worth mentioning that, for the first time during the elaboration of a Union constitutive text, *circumstances of complete publicity and transparency* were guaranteed. Thus, every NGO of a european or national level had the opportunity to express its views, while the media followed closely the works of the Convention.

The Convention not only completed its works within the given period of time, but it also provided an interesting example of democratic function within the European Union.

III. The work of the Convention

The multilevel negotiation begun vividly almost at the opening of the work of the Convention and was indeed turbulent and interesting in many aspects. Its main concern was to absorb the conflicts and the different approaches, as well as to achieve a consensus. Thus, hundreds of proposals for almost every issue discussed were submitted to the Praesidium not only from the members of the body but also from NGOs and the representatives of the candidate countries.

Despite the major problems the Convention had to face, its members made great efforts to conclude it successfully and fulfill its historic mission. The final text of the Charter was adopted at the Convention's last working session on the 2nd of October 2000, it was presented at the Biarritz Summit and, finally, it was proclaimed by the Nice Summit. The Charter, even if it did not exactly live up to the expectations of the European citizens, was greeted as an important step forward.

IV. The features of the Charter

In the light of the mandate and the nature of the Convention, its *choices had to remain strictly within the framework of the Union's Treaties*. That was more obvious in cases where the Treaties and the Charter included similar or relevant provisions as for example the fundamental freedoms and the political rights recognized by the EC Treaty.

Similar was also the danger of expanding indirectly the competences of the Union and of assigning additional duties through the context and the regulatory function of at least some of the Charter's rights. This could especially happen in the field of social rights. The Convention demonstrated, at this point, reasonable self-restraint by preventing explicitly this prospect in art. 51 par. 2.

The most important source of inspiration for the Charter is the ECHR. That was expected since article 6 par. 2 of the EU Treaty recognizes the ECHR as an essential foundation for the protection of human rights. Nevertheless, the *Convention chose to formulate an autonomous and thorough system*, intended to serve the needs of the European Union. This choice is reflected and documented by the provisions and

is confirmed by the Charter's structure, especially through its relation to the established systems of the ECHR and of the national Constitutions.

Naturally, this choice determined *the relation of the Charter to the ECHR*, which, in anyhow, is and will remain privileged. The ECHR's decisive influence during the drafting of the Charter will continue, certainly in different terms, at the implementation stage, since the Charter makes reference to the ECHR in order to clarify the meaning, the context and the restrictions for the exercise of most of the rights it recognizes (art. 52 par. 3).

Furthermore, the Convention was constantly concerned with the prevention of challenging the member - states' Constitutions due to the wording of the provisions of the Charter. The reason is obvious. National Parliaments will be sooner or later called upon to approve the Charter. If, therefore, divergences from the constitutions' provisions on human rights were noted, the issue of their revision would arise, followed by all the subsequent institutional and political inconveniences. It is worth mentioning however, that this possibility seems remote, mainly for two reasons. The features of the Charter correspond basically to the common attributes of all the national Constitutions while, on the other hand, the scope of the Constitution and the scope of the Charter are more or less distinct.

The Convention was also preoccupied with the consequent increase of financial burdens mostly due to the eventual recognition of social rights. This explains the relatively weak protection finally provided by some of the social rights. The members of the Union, that traditionally provide a wide system of social care were afraid that a generous approach on the recognition of those rights throughout the European Union would lead to the increase of the required funds, a big part of which they would be asked to cover.

V. The contents of the Charter

The Charter, at first, protects fundamental rights included in the three traditional categories. It thus includes civil, political and social rights. Its concern reasonably extends, though, to some other *new rights* intended to deal with the challenges relating to the explosive development of new technologies.

The Charter's main novelty is that it moves away from traditional classifications and arranges the protected rights into six new distinct groups. *Those groups correspond to six principles-values, which constitute the foundations of the European institutional and political civilization.* In the text's order these are, dignity (arts. 1 to 5), freedom (arts. 6 to 19), equality (arts. 20 to 26), solidarity (arts. 27 to 38), democracy -as represented in the political rights of the European citizens- (arts. 39 to 46) and justice (arts 47 to 50). Thus, the protection of the person, in all the basic aspects of one's life, is placed at the forefront of the Charter, as it is also underlined in the preamble.

The Convention used as sources of inspiration, the constitutional traditions of the Union member-states, the ECHR and its protocols, the jurisprudence of the ECJ, the Social Charters and some International Conventions. The Convention drew out ideas and solutions from all these sources and tried to bring them together into a new institutional and political perception.

VI. The character of the Charter

A major issue for the *function of the Charter* and the institutional development it envisaged within the framework of the European Union, was the *character of the Charter*. Thus, if the Charter was intended to acquire a binding effect, it would, to an important extent, reform the institutional structure of the Union, while on the other hand, if it was to remain a declaration it would only exercise political influence.

The issue was left open at the Cologne Summit since the relevant mandate prescribed the drafting of the Charter under both options. The Convention was thus faced from the very beginning with an extremely difficult political and methodological problem.

The solution that the Convention reached is characterized as realistic. The document that was adopted, in the end, corresponds more to the requirements of a binding document. Indeed, the last chapter that describes the terms of implementation of the Charter would have no meaning, if the Charter was not intended to acquire binding effect. On the other hand, though, the provisions recognizing the rights correlate more with a document of declaratory character, since they have not always a thorough regulatory context.

The *Intergovernmental Conference of Nice* faced the dilemma and gave the *Charter declaratory character*. The self-consciousness of the Heads of States and Governments was apparent at the Conclusions of the Summit where the fate of the Charter and its institutional upgrading was already referred to the next Intergovernmental Conference.

The solution that prevailed is therefore temporary. Hopefully, the restraints that determined the decision of Nice will be lifted and the circumstances - that will allow the binding effect of the Charter - will mature. Meanwhile, the Charter is expected to exert an *implied quasi-regulatory impact*.

VII. Holders and addressees of the rights

Holder of the rights is every person who lives in the European Union and naturally, every citizen of the member-states and the Union. Drafting the Charter, the efforts focused in guaranteeing the more possible rights for every person that lives and works legally in the Union. Care was also taken in order to express the liberal and democratic notions that prevail in the Continent and to present to the international community a high quality standard of historical perspective.

It is worth mentioning though, that the Charter in some cases awarded rights only to the benefit of the Union's citizen although these rights could be guaranteed for everyone without exception according to the rights' nature and context. This applies e.g. to the field of political rights that, at the first place, belong to the Union's citizens. This rule though, should have some exceptions like for example the gradual recognition of the right to participate in the local government for every person that lives and works legitimately in the countries of the European Union. The Charter apparently disregarded these possible exceptions.

The addressees of the Charter's provisions are in the first place the institutions and the bodies of the European Union. This is reasonable since the main mission of the Charter is to provide for a system of protection towards the community powers.

Addressees are also the national authorities when they have to apply, within the framework of their competence, rules of community law (article 51 par. 1). It is obvious that, if this provision did not exist, the Charter would remain more or less ineffective, since the implementation of community law is frequently entrusted to the national authorities.

VIII. Addendum

The initiative for the adoption of the Charter of Fundamental Rights was taken at a moment when the institutional and political future of the Union is discussed. The pending enlargement, the federation perspective and the debate on the Union's Constitution *lay down a new framework for the architecture of European integration*. A framework that constitutes a quality leap, in relation to the evolution that took place in the past.

Under these circumstances the Charter functions as the basic tool and plays a leading role to the new *structure of the European Union*. It finally brings the citizen at the center of the European political system and creates the conditions that will allow him to undertake the responsibility for the promotion of the European integration and therefore to participate actively in *the historical process*.

It is thus obligatory to determine in every aspect the position of the citizen within the institutional structure of the European Union. This is the task that the Charter has to accomplish, being intended to operate *as the chariot for the constitutional organization of the Union*. Any attempt to comprehend the main target leads to the conclusion that the Charter's inclusion in the Constitutive Treaties and the consequent binding effect would constitute, by the engraving of the first integrated constitutional enclaves of the European Union, a historical transition. In other words, it will function *as the pioneer and the forerunner for the endorsement of a Constitution within the federation perspective*.