

## Etienne Davignon, The citizen's Europe (1979)

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## Etienne Davignon, *The citizen's Europe*

I would like to discuss briefly one of Europe's principal constituents, its citizens, and determine whether, from the point of view of individual awareness, the situation has evolved since Robert Schuman's famous declaration in 1950.

I consider this a fundamental issue in that it compels us to recall that the plan for European integration was first and foremost an essentially political one.

The more I watch Europe develop today, the more I find the argument as to whether Europe in an economic or political entity senseless and altogether unfounded since, ultimately, what is the purpose of European integration if not to exert an influence on the lines of the inhabitants of our countries?

If exerting an influence on the lines of individuals is not my primary and loftiest task, then truly I do not know what politics means.

This immediately brings to mind the fact that at the outset the question was a political one in the most dramatic sense of the word.

We should bear in mind in this connection the words spoken by Robert Schuman when announcing the establishment of a new high authority which was to deal with the two matters of the most fundamental, strategic importance at the time, namely coal and steel. The proposal was to "build the first concrete foundation of the European Federation which is indispensable to the preservation of peace". The word fundamental was dropped. The intention was to establish a secure and peaceful society, an idea that was quite revolutionary in Europe at the time since we were just emerging from 2000 years of civil war.

Some years later the same founding-fathers, having decided to surmount the failure of the EDC and to launch the EEC, were wise and well advised to express in the preamble to the Treaty their determination to lay "the foundations of an ever closer union among the peoples of Europe".

If these words are regarded as being purely empty ones, it should be enough to comment that when three European states change their systems of government fundamentally in order to become pluralist parliamentary democracies, their first desire is to express their wish to belong to the European Community because they genuinely believe that it guarantees them a democratic basis, in particular freedom of speech for their citizens.

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When examining the situation two dangers must be avoided:

The first of these is to consider matters from the point of view of someone who has much faith and optimism and to conclude that we have achieved considerable progress. That would be the crowning mistake since before the ECSC there was nothing. Everything which has been achieved consequently constitutes progress.

Matters must be judged however not in the abstract but by determining whether the progress achieved measures up to the objectives that were set.

The second danger is to consider events from the rather acrimonious view point of the pessimist for whom matters have not turned out quite as he would have liked.

I must say that occasionally, in observing the European election campaign, it has been difficult for me to overlook the fact that those who declaim Europe's failing were in power when the Community was being formed in well-known difficult circumstances.

I have no wish however to become involved in that third form of overindulgence characteristic of western society, that is, to study in excessive detail the causes of our past failures and thus dissipate the energy required if progress is to be achieved.

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Does one citizen exist and does he possess rights which he would not have if the European Community did not exist? This is the first element in the make-up of the European citizen that we are talking about.

It is my belief that if one examines the situation briefly indications are that in certain fundamental ways the European citizen is afforded greater protection under Community law than he would be afforded simply under national law.

As a brief illustration of this I would like to give three examples:

— The first is that a large number of Treaty provisions automatically apply in our daily lives without the need for Council decisions or regulations.

Thus the prohibition imposed on the Member States against introducing taxes or charges which are equivalent to customs duties is an automatic right and does not require a Council of decision. The prohibition of discrimination in tax matters is another element which applies automatically under Article 95 of the EEC Treaty.

The provisions confer direct rights on individuals irrespective of any national measures.

— The second example is the precedence of Community law over national law regardless of the nature or date of entry into force of the provisions of national law. One of the major legal arguments which we met with at university was whether international law took precedence over national law.

It is interesting to note that at a time when all States are attaching increasing importance to regionalization, the Court of Justice has stated, so that there can be no ambiguity, that it would regard the States alone as bearing responsibility regardless of any delegation of power within them. This confirms without any doubt the precedence of Community law over national law.

— Finally, it is important to note, and this is my third example, that these rights give rise to specific remedies before the Commission and the Court of Justice, that is, that the right entails the possibility of legal proceedings, a point which I consider to be important.

Here we are faced with a legal controversy: should a legal innovation be introduced to secure for individuals the right to institute proceedings before the Court in respect of all Community legal acts or should the existing situation be developed, taking into consideration decisions of the Court?

I am always in favour of action which enables it to be clearly demonstrated which objectives are being pursued and it is obvious that a Council declaration setting out the rights of the citizen vis-à-vis the Court of Justice would have the major advantage of clarifying the situation.

It would also have the major drawback of providing those who are more hesitant from a political standpoint with an excuse for obstructing this development of the Court's jurisprudence since the status quo would, to a certain extent, be maintained while the general problem was being discussed.

I am rather suspicious at present of those major projects to which everyone agrees in principle but whose practical implementation implies an obligation on the part of the Community to reply in advance to all questions or theoretical problems which could arise, with the result that no progress is made in any given direction unless assurances are given before the first step is taken as to what lies in store. Human mobility is such that it is difficult to be in two places at the same time. The result is inertia. This has prompted Mr.

Schmidt to say: "Let us beware of the temptation to make Sunday speeches which justify failure to take action during the week".

There is an aspect of the dissemination of information in which the Community structure is basically deficient and where work which we could undertake with the European Cultural Foundation would undoubtedly enable us to start to remedy matter.

I would very much like to know who is aware that under Article 173 of the Treaty any person is entitled to institute proceedings before the Court against a decision which is of individual concern to him. Probably a few Commission officials who consider that it treats them badly and who bring the matter before the Court, but apart from that, and those cases are much more in the nature of social disputes rather than being of major benefit from the point of Community law, the citizen is unaware of this right.

It is my opinion that even among lawyers there is not yet a clear understanding in all Member States of the nature of references for a preliminary ruling, that is, the right of national courts to refer questions to the Court of Justice in order to determine the basis on which decisions must be taken.

Finally, who is aware that under Article 178 and 215 of the Treaty anyone may bring an action before the Court for compensation for damage caused in cases of non-contractual liability by a Community institution, even where the damage ensues from a legal act which cannot be challenged?

Steps will have to be taken therefore to provide the citizen with basic information as to his rights. When referring to citizen's rights, I have, of course, endeavoured to emphasize not the subjective benefits which flow from belonging to the European Community but rather those rights which are secured by legal remedies.

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A second category of rights consists of those based on common policies affecting the four major freedoms: the freedom of movement of goods, persons, services and capital which have in fact resulted in a number of measures which have conferred new rights on individuals compared with what existed previously.

The result of one of the best known benefits of freedom of movement has been that workers and their dependants have, in the field of social security, gained a benefit which automatically flows from their freedom to work anywhere, namely that when their pensions are calculated all the periods which must be taken into consideration under the different national laws are aggregated.

There is no doubt that progress has also been achieved as far as the professions are concerned since doctors, dentists, veterinary surgeons and nurses can now engage freely in their profession in all Community countries without having to undergo further examinations, provided they fulfil the general requirements defined at Community level which, in some countries, have entailed amendment of the national laws that govern engaging in those professions.

Finally, as a result of freedom of movement for workers, the children of workers are entitled to the same educational opportunities as the nationals of a country, regardless of whether they are wage earners of self-employed, the purpose of this being to ensure that conditions are identical for all Community nationals.

This means that all those rights which, under a federal structure, would probably have been covered by a declaration of rights have been secured, under the Community system, by implementing new policies.

Of course there are new developments as time goes on and today we are concerned with workers' rights of participation in the context of defining company law, problems affecting consumers, including protection against misleading advertising, product liability even in the absence of negligence, and so on.

There is a final category of rights which is perhaps even more significant and which is based on a policy that

is more specifically directed.

Today the best-known instance of this is steel (previously it was coal).

Nowadays, if a worker loses his job in the steel industry he is automatically entitled, under Community law and for a specified period, to receive an allowance in addition to that provided for under the social legislation of his country of origin.

This is not an option but a right and the question whether or not the funds exist does not arise since there is an obligation under the Treaty itself and Conventions to grant this allowance. This is a demonstration therefore of how Community solidarity can benefit the Community citizen in exactly the same way that solidarity operates at national level in cases of this kind.

I could give similar examples in the sphere of agriculture.

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It could be said that these various rights are specific and sectorial and do not fundamentally affect the most political aspect of all, that is, the fact that we are a pluralist parliamentary democracy.

Let us consider therefore how the Community has contributed to the protection of fundamental rights.

I have already referred to the passage in the preamble to the Treaty of Rome which, if it is to be properly understood, must be considered in the context of the period in which it was drafted.

The appeal made in the preamble to States that were champions of liberty obviously alluded to a particular situation since we were then in the middle of the Cold War at a time when the contrast between two parts of Europe was most marked, that in which liberty existed and that in which it was in the process of disappearing.

It is my belief that our Governments have acted consistently with this approach. Thus, when endeavouring to set out their ideas on this subject after European political cooperation had been revived they stated in the Declaration on the European Identity that they were determined to defend the principles of representative democracy, the rule of law, social justice and respect for human rights, all of which are fundamental elements of the European idea. This is therefore a theme that underlies the movement towards unification.

The Heads of State and of Government stressed in a joint declaration by the different European Institutions that respect and the maintenance of representative democracy and human rights in each Member State are essential elements to membership of the European Communities. The position cannot be put more clearly than that.

The political intention is clear but is it sufficient?

Does the degree of legal protection of these fundamental rights measure up to the political consensus?

I consider it necessary once more to look to the Court of Justice, that remarkable institution of the European Community, and observe that since the delivery of two leading judgments in 1969 and 1970, respect for fundamental rights forms an integral part of the general principles of law with which the Court of Justice must secure compliance. The Court has indicated moreover that it will not tolerate measures which are incompatible with the fundamental rights recognized and guaranteed under the constitutions of the Member States.

We believe that there is still room for progress. It is for that reason that the Commission breaking new ground at the beginning of this year and with the intention of opening discussions on these fundamental matters with the newly elected European Parliament, sent a memorandum to the Parliament in May

suggesting that the Community as such, a legal institution separate from its Member States, should accede to the European Convention on Human Rights and to all the attendant institutional structure.

I believe therefore that if the Community could accept that in matters of such importance as the protection of fundamental right it forms part of a wider institutional framework that lays down rules and provides guarantees, this would be a very clear indication of our desire for a legal system that upheld respect for human rights and would strengthen the image which the Community wishes to project of being a land of freedom and democracy.

There are many technical difficulties, of course, since the European Convention of Strasbourg provides only for the accession of States and not a Community and because it is a convention of traditional kind, whereas our intention in having the Community accede to it is to bring about a very special situation.

I have no doubt that in spite of the difficulties involved the importance of Community accession is such that we will manage to overcome them and succeed in proving what to me is fundamental, that is, that Europe belongs to its citizens.

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European unification is a never-ending task.

The protection of fundamental rights will never be completed but if we fail to show that progress is actually being achieved day by day and if we do not rid Europe of its present lacklustre image, faced as it constantly is with the test of everyday affairs which for everybody and for every venture is the hardest test of all, then I feel there is a danger that our momentum will peter out.

I believe quite simply that if one thinks about what an end to the momentum towards unification means, it is that our leaders would be depriving Community citizens of the opportunity of influencing their own future. This, in essence, is what is at stake in Europe.

People are happy to say that our fundamental problems can no longer be resolved solely at national level, in other words, that national policies cannot produce answers that afford the hope and security which citizens need. Should it be true that in certain circumstances action can no longer be taken at national level and if it were not possible either, to act at European level, this would mean that for the first time in its history Europe and its States would be prepared to accept fate as their lot rather than use their imagination, their courage and their potential for creating a new society.

Faced with a choice of this nature, it strikes me as obvious that no-one has the right to betray the aspirations of our citizens for a better future where this can be attained effectively only at European level. Confronted with such a dilemma Governments must give a clear response and this response will be all the clearer if people who, like us, are entirely convinced, leave them in no doubt as to what we wish them to do.