The Charter of Fundamental Rights of the European Union

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URL:
http://www.cvce.eu/obj/the_charter_of_fundamental_rights_of_the_european_union-en-fc3d8276-ff13-42a3-8aa9-4602ac6bde39.html

Last updated: 08/07/2016

The Charter of Fundamental Rights of the European Union

The attention focused on the people of Europe and the human dimension in the development of the European Union, which had already found expression in the provisions of the Treaty of Amsterdam and in the creation of the area of freedom, security and justice, was also reflected in the formulation of the Charter of Fundamental Rights of the European Union. At the request of the European Parliament, the European Council, meeting in Cologne from 2 to 4 June 1999, decided to have the rights of European citizens codified, since 'protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy'.

It is true that, in the field of human rights, the Member States of the European Communities are signatories to the Council of Europe's Convention of 4 November 1950 on the Protection of Human Rights and Fundamental Freedoms and to the Final Act of the Conference on Security and Cooperation in Europe, concluded on 1 August 1975. Although the founding treaties of the Communities do not refer explicitly to international agreements, the case law of the European Court of Justice has established that human rights must be a paramount reference point for the exercise of Community powers. Parliament and the Council have frequently reaffirmed their commitment to human rights and fundamental freedoms. Since the signing of the Single European Act on 17 and 28 February 1986, the aim of safeguarding these rights and freedoms has been expressly enshrined in the Community treaties.

Nevertheless, there seemed to be a need to draw up an instrument encompassing all the rights of European citizens, in other words not only the fundamental rights derived from the common constitutional traditions of the Member States but also the civil, political, economic and social rights enjoyed by citizens of the European Union. Such a charter, it was felt, should be incorporated into the Treaties so that any European citizen could refer to them and, if need be, assert them in a court of law.

For the drafting of this charter, the European Council chose a more open method than that of diplomatic negotiation. Responsibility was vested in a 'body composed of representatives of the Heads of State and Government and of the President of the Commission as well as members of the European Parliament and national parliaments', with representatives of the European Court of Justice participating as observers. Representatives of the Economic and Social Committee and the Committee of the Regions as well as individual experts were invited to give their views. The drafting was to be completed before the European Council summit in Nice, scheduled for December 2000. At its meeting in Tampere on 15 October 1999, the European Council specified the composition of the 62-member body, which gave itself the more prestigious title of 'Convention'.

The Convention held its constituent meeting on 17 December 1999 and elected as its chairman Roman Herzog, former President of the Federal Republic of Germany. Its deliberations were conducted with maximum transparency, with the transcript of public debates and the text of preparatory documents being made available on the Internet. There were inputs from representatives of the European Court of Justice, the Council of Europe, trade unions, non-governmental organisations and the governments of countries applying for accession to the EU. The discussions were very free and sometimes lively, but they never became bogged down, since Roman Herzog was resolved to establish a consensus in order to make the text of the draft acceptable to all the Member States, which explains the compromise nature of some clauses and their careful wording.

Many were the difficulties that had to be overcome. There was a basic need to take account of the differences between national legal systems, such as the contrast between the Latin countries' attachment to statute law and that of the British to common law. Then there was the difference in interpretation between the Germans, for whom the law is enforceable, in the sense that an individual has a right of recourse to the courts to have the law applied, and the French, who distinguish between the general principle of the '*droit à*' (the 'right to'), which creates no precise obligation, and the '*droit de*' (the 'right of'), which is effectively enforceable. The aim of the drafting process was to produce a clearly worded document that was publicly accessible yet precise enough to be a source of law if the Charter were incorporated into the Treaties of the European Union. In spite of the aforementioned difficulties, the Convention made rapid progress. The draft

was completed on 26 September 2000 and was presented to the European Council at its Biarritz Summit on 12 and 13 October with a view to final adoption or rejection at the Nice Summit.

The preamble to the Charter states that ‘the peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values’. Conscious of its ‘spiritual and moral heritage’ — a formula that replaced the ‘cultural, humanist and religious heritage’ proposed by the Christian Democrats but not adopted in the face of opposition from several Member States, and especially France, in the name of secularism — the Union is founded on the indivisible universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities by establishing the citizenship of the Union and by creating an ‘area of freedom, security and justice’. The preamble specifies that the Union contributes to the preservation and development of these common values ‘while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States’ […] ‘with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity’.

The rights enshrined in the Charter are enumerated in six chapters, headed ‘Dignity’, ‘Freedoms’, ‘Equality’, ‘Solidarity’, ‘Citizens’ Rights’ and ‘Justice’.

The first three chapters, relating to civil and political rights, scarcely posed any problems. Human dignity is declared inviolable, everyone has the right to life, no one shall be condemned to the death penalty or executed, and everyone has the right to respect for his or her physical and mental integrity, from which is derived the prohibition of eugenic practices and human cloning, torture, slavery and forced labour. The chapter on freedoms includes a long list of rights and freedoms: the right to liberty and security, to respect for private and family life and to protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, of expression and information, of assembly and of association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum and the right to protection in the event of removal, expulsion or extradition. The chapter on equality covers equality before the law, non-discrimination, respect for cultural, religious and linguistic diversity, equality between men and women, the rights of children and the elderly and integration of persons with disabilities.

The chapter on solidarity was more difficult to draft. Its title was adopted in place of ‘social rights’ because of the divergences that emerged within the Convention between the southern countries, with their attachment to the affirmation and enshrinement of economic and social rights, and the northern countries, which preferred simply to leave these matters to the formalised dialogue between management and labour. Britain and Ireland even tried to oppose the inclusion in the Charter of the right to strike and the right to form trade unions, both of which were eventually included. Consequently, this chapter is worded in very general terms and does not go beyond basic principles, namely workers’ right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, protection of family life and reconciliation of family and professional life through measures such as maternity leave and parental leave. The right of access to social-security benefits and social services is recognised but not the right to social security. Similarly, the Charter enshrines the right to social and housing assistance but not the right to employment and housing. Lastly, this chapter of the Charter refers to health care, environmental protection and consumer protection. In all of these domains, the implementation mechanisms are those established by Community law and by national legislation and practice. These, of course, remain diverse and unequal.

The chapter on citizens’ rights enumerates the rights of European citizens — who are by definition the citizens of the Member States — in the framework of the Union, namely the right to vote and stand as a candidate in elections to the European Parliament and in local elections in their country of residence, the right to good administration by the institutions and bodies of the Union and, to this end, the right to refer cases of maladministration to the Ombudsman of the Union, to have access to European Parliament, Council and Commission documents, to petition the European Parliament and to receive protection from the diplomatic and consular authorities of any Member State in the territory of countries in which their own

Member State is not represented. Nationals of non-EU countries who reside in the Union, for their part, can be granted only freedom of movement and residence.

The chapter on justice is confined to a recapitulation of basic principles: the right to an effective remedy before an impartial tribunal for everyone whose rights and freedoms guaranteed by the law of the Union are violated, the presumption of innocence and the right of defence, the principles of legality and proportionality of criminal offences and penalties and the right not to be tried or punished twice for the same offence.

The final provisions stipulate that ‘the provisions of this Charter are addressed to the institutions and bodies of the Union with due regard to the principle of subsidiarity and to the Member States only when they are implementing Union law’. They are to apply these provisions ‘in accordance with their respective powers’.

On the whole, in spite of the inadequacies and excessive caution resulting from divergent outlooks and policies, the Charter does constitute a coherent entity. Its legal status, however, had yet to be determined. If it was a constitutional instrument binding the Member States, it would have to be the subject of a ratifiable treaty. On receiving the draft in Biarritz, the European Council did not wish to go so far as that and decided that it would simply be subject to approval by the Council. In Nice, before the opening of what proved to be a particularly difficult meeting of the European Council, the Heads of State or Government were content to opt for a solemn proclamation, jointly with Parliament and the Commission, of the Charter of Fundamental Rights of the European Union, thereby shelving any discussion about the legal status of the text. It fell to the Convention on the Future of Europe to integrate it without amendment into the draft Constitutional Treaty which it adopted on 13 June 2003 and submitted officially, in Rome on 18 July 2003, to Silvio Berlusconi, President-in-Office of the Council of the European Union, whose task it was to open the Intergovernmental Conference (IGC). The Treaty establishing a Constitution for Europe was solemnly signed in Rome by the representatives of the 25 Member States on 29 October 2004.