

Address given by António Vitorino at the opening session of the Convention on a European Union Charter of Fundamental Rights (17 December 1999)

Caption: On 17 December 1999, António Vitorino, Representative of Romano Prodi, President of the Commission, at the Convention responsible for drafting the European Union Charter of Fundamental Rights, delivers an address at the opening session of the Convention in Brussels.

Source: Address given by António Vitorino at the opening of the Convention responsible for drafting the EU Charter of fundamental rights. [ON-LINE]. [Brussels]: European Commission, [27.05.2005]. Disponible sur http://europa.eu.int/comm/justice_home/unit/charte/fr/speeches.html.

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First meeting of the group responsible for drawing up a draft EU Charter of fundamental rights (17 December 1999)

It is a great honour for me to be representing the Commission on this, the group responsible for drawing up the draft European Union Charter of fundamental rights.

Firstly, because the group is to draft a text which will no doubt signal a new phase in European integration and which could establish the necessary political and moral legitimacy of the European Union in the eyes of many of its citizens.

Secondly, because the form chosen by the Heads of State or Government for the body which is to draft the Charter is completely new and innovative. Never before has a Community instrument been drafted by a group with this composition. For the first time, Community and national authorities have been combined, and also the legislative and executive branches of both. The Commission warmly welcomes this innovative method of work involving a majority of representatives democratically elected by citizens at both national and Union level.

The membership of the group is not something that has come about by chance but is the result of a deliberate decision by the Heads of State or Government, first taken at Cologne and then confirmed at Tampere. I am convinced that the judicious combination of Community and national representatives and, above all, the predominance of parliamentarians will help strengthen the legitimacy of the draft Charter in the eyes of a public that has often viewed critically the complex decision-making procedures at European level.

The Commission also welcomes the transparency surrounding the work of the group. The preparation of an instrument of such practical and symbolic importance would not have been compatible with secrecy and lack of openness. Transmission of the discussions and above all dissemination of all the working papers on the group's Internet site are praiseworthy examples to be followed on other occasions.

The work we have before us is - there is no point in denying the truth - extremely motivating but also complex and wide-ranging. How can we put together an ambitious document, of great political significance, which represents genuine value added in relation to the large body of law that already exists in this area, and is at the same time suitable for being inserted into the Treaty?

Obviously, and as was clearly stated at Cologne, the final decision on whether or not the Charter is to be inserted into the Treaty and the way in which that might be done is a matter for the Heads of State or Government. It is our task, in the meantime, to put forward a text that satisfies the criteria, in terms of both form and content, for being integrated into the Treaty. In the Commission's opinion, the ultimate objective is to provide the Union with a Charter of fundamental rights that is a binding legal instrument which is enforceable and subject to judicial review. That objective should constantly be guiding our work.

I believe that we should focus from the outset on a few essential points on which we must quickly determine our position. There are two such preliminary questions to be tackled: the type of rights to be enshrined in the Charter and the relations between the future Charter and the Union, on the one hand, and the Council of Europe Convention for the protection of human rights, on the other.

As for the type of rights to be enshrined in the Union Charter, we should take as our starting-point the mandate adopted by the Cologne European Council, which states that the Charter should include rights relating to freedom and equality and basic procedural rights, such as those guaranteed by the European Convention on Human Rights and those derived from the constitutional traditions common to the Member States as general principles of Community law. The Heads of State and Government also considered that the Charter should enshrine the rights reserved for Union citizens and take on board the economic and social rights laid down in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

Let me say once again that we must not lose sight of our ultimate goal, which is to make the draft Charter

suitable for incorporation into the Treaty. With this in mind, I propose that we concentrate on the fundamental rights which stem directly from the very existence of the European Union. The fact is that, irrespective of the form it subsequently takes, the Charter will revoke or annul none of the many national or international legal instruments on fundamental rights. The aim of the Charter should be to spell out clearly the fundamental rights arising from the Treaties and the Community legal order as a whole, which obviously includes the rich and innovative case-law built up over the last few decades by the Court of Justice of the European Communities.

If we follow this method, as the Heads of State and Government have requested, the Charter will embrace civil and political rights, social rights and the rights arising from European citizenship. However, hardly anything has been said about whether - and to what extent - these rights are conferred or protected by the Union. I would like to reiterate here that the European Union Charter of Fundamental Rights will not be designed to take the place of national constitutions or instruments of international law, but will merely supplement them with regard to the Union's legal order.

The advantage of this approach is that it enables us to combine political aspirations and a necessary dose of pragmatism. Once again, our goal is to see the draft text written into the Treaty. This means it must win general acceptance from the Member States and Europe's citizens.

The second question, which has already been written about at some length and is now back on the agenda with the drafting of the Charter, concerns the possibility of the Union signing up to the European Convention on Human Rights.

This issue can be broken down into two separate questions:

- Why do we need a European Charter of Fundamental Rights if the Convention and its system of protection already exist?
- Should the Union not accede to the European Convention on Human Rights whether or not the Charter is adopted?

The Commission's response to these questions today is the same as it was in 1979 and 1990: the Commission has always been in favour of signing the Convention, a view shared by the European Parliament, which has expressed its support for signing the Convention in several resolutions. As you will be aware, the idea was dropped after the Court of Justice ruled that the Community did not have the power to sign the Convention. However, the question is coming up again and will have to be addressed in the course of our work.

In the view of the Commission, adopting a Charter of Fundamental Rights does not stand in the way of signing the Convention or obviate the need to do so; likewise, signing the Convention does not stand in the way of the European Union adopting its own Charter of Fundamental Rights or obviate the need for it to do so.

It is clear that we will not be able to stop this issue arising in the course of our work on drafting the Charter. Nonetheless, there is, in my view, no need for us to come up with a definitive answer, provided that we agree on the Commission's analysis that signing the Convention is compatible with the Union adopting a list of fundamental rights of its own.

As you know, at the same time work is progressing on revising the Treaties in preparation for forthcoming enlargement. It is as part of the Intergovernmental Conference that there will have to be discussion on possible changes to the Treaty to allow for signing the Convention. However, I am sure that there is no need for the IGC discussions and any decisions taken there to interfere with our work, given that the two issues are quite separate.

In conclusion, I would like to say a few words regarding the inevitable procedural issues. Without wishing

to repeat what I have already said regarding the purpose of our work, I would like to point out that in order to make a success of the task we have been set, we will, first and foremost, need to opt for the classic approach to working procedures based on all- round consensus, as suggested by the Presidency. This approach will call for considerable Presidency input as well as a degree of restraint on the part of all of us involved in the Group, but I am convinced there is no other way to go.

Working methods based on consensus, a pragmatic approach to problems and concentrating on the areas and rights appropriate in one way or another to European Union are the key to seeing our work through to successful completion and, when the time comes, presenting the Heads of State and Government with an ambitious and substantial text that is, nonetheless, realistic and suitable for eventual incorporation into the Treaty.

One thing is for sure: a lot is expected of this Charter by various sectors of society throughout Europe. It is our duty to do everything we can to make sure they are not disappointed. As Chancellor Schröder recently commented, the Union's Charter of Fundamental Rights is the right way to go to provide Europe with an institutional framework.