

EUROPEAN MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION - A HISTORICAL AND LEGAL PERSPECTIVE

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Abstract: *This paper aims at making a concise and objective presentation, from historical and legal perspective, of the EU Charter of Fundamental Rights (EUCFR) which is a real mechanism for protecting human rights in the European space. It also aims at developing a brief analysis of a direct benefit of this document, namely the European citizenship.*

Thus, according to the Charter, European citizenship is strengthened and becomes more coherent arising from the recognition of rights, the equality of all citizens and their non-discrimination, the functioning of the Union on the principle of representative democracy and from ensuring dialogue and transparency between the EU institutions and citizens.

Keywords: *human rights, European citizenship, European Union (EU), Charter of Fundamental Rights (CFR).*

General considerations. The human rights system based on the principle of universality, indivisibility and interdependence was established through a series of statements, documents and acts, some of them with moral value, other legally binding, strengthening, thus, the need for legal instruments to constitute genuine human rights mechanisms of protection.

The specific international legal framework of human rights consists of a series of documents that form the International Bill of Human Rights, such as: the United Nations Charter (UN), the Universal Declaration of Human Rights and two UN pacts on civil and political rights, on one hand and, on the other hand, on economic, social and cultural rights.

In Europe, as it is known, there is the European Court of Human Rights dealing with human rights and ensuring that states fulfill their obligations under human rights law and of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹.

The European Communities, later the European Union, declared as a goal the welfare of citizens, and initially, by their provisions on fundamental human rights were focused on the Community law.

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¹ Ioan Vida, *Drepturile omului in reglementări internaționale/ Drepturile omului in reglementări internaționale*, Editura Lumina Lex, București, 1999, p.15

In this context, in the EU has emerged a need for adopting a document on human rights containing all the rights set out by the international and European documents as well as a series of modern rights.

This document is the *Charter of Fundamental Rights*, a mechanism for protection of fundamental rights at EU level, adopted by the European Council in Nice in 2000. The Charter of Fundamental Rights is part of the Lisbon Treaty², which entered into force on the 1st of December 2009. Article 2 of the TEU includes among “the fundamental values of the Union, which are common to the Member States”, the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as well as pluralism, nondiscrimination, tolerance, justice, solidarity and equality between women and men. These values are equally binding for the EU and member states. As regards the latter, the new Article 7 of the TEU establishes a procedure of suspension of the rights of member states responsible for a serious and persistent breach of the values referred to in Article 2. Such values also form the essential core of a European identity and for this reason must be shared by all the states wishing to accede to the EU (as prescribed by Article 49 of the TEU).

The main features of the rights which have been considered in drafting the Charter were universality, indivisibility and justice seeking³. Universality refers to the rights recognized to every human being, but there are also rights that belong only to European citizens. Indivisibility is the feature that gives originality to the Charter because, unlike the United Nations system, it makes no distinction between civil and political rights and economic, social and cultural rights from the formal perspective. Justice seeking is a basic element for the effectiveness of any system of human rights.

A short history of the Charter

The European Council from Cologne (3-4 June 1999) decided drafting the Charter of Fundamental Rights, decision that was the result of more than 12 months of discussions and negotiations⁴.

The Cologne European Council proposed as political objective updating the EU's commitment to ensure the protection of fundamental rights and, at the same time, approved the method to prepare the draft Charter, giving responsibility to a body in which to be represented both the legitimacy of national states and European interests as a whole⁵.

The method was that of the “Convention” which had a mandate to bring together in one document the rights protected by Community law and those set

² Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU)

³ Victor Ducelescu, *Protecția juridică a drepturilor omului/ Legal Protection of Human Rights*, Editura Lumina Lex, București, 2008, p.143

⁴ I.Eleonora Rusu, G.Goring, *Dreptul Uniunii Europene/ European Union Law*, Editura C.H.Beck, București, 2006, p.108

⁵ Conclusions – European Council, Cologne, The Decision of European Council regarding the elaboration of the Charter of Human Rights of EU, June, 3-4, 1999, www.ue.eu.int/summ

forth in international instruments and common constitutional traditions of member states, without introducing additional rights or limitations to those existing and without causing changes to the constitutions of member states⁶.

The Convention was chaired by Roman Herzog⁷ and was responsible for drafting the Charter, and at the Council in Tampere (15-16 October 1999)⁸ were established the composition and its way of work. The Convention was assisted by an Office composed of the President of the Office and vice-presidents appointed by the members of European Parliament, national parliamentarians and the EU Council President. Works began on 17 December 1999, and ended on 2nd of October 2000, and subsequently at the meeting of heads of state and government from Biaritz (13 - 14 October 2000), a draft Charter was agreed⁹. This required to the European Parliament, the EU Council and the Commission to approve the Charter. The European Parliament expressed the will, in the sense of an agreement, on 14 November 2000, and the Commission on 6 December¹⁰. On behalf of their institutions, members of the Convention signed and officially recognized the Charter on 7 December 2000, in the Intergovernmental Conference in Nice. Because of the very strong opposition of some member states¹¹ in 2000, the Charter was not introduced in the Treaty of Nice.

As a result, the European Council in Laeken, Belgium (14 - 15 December 2001), thought of an alternative to intergovernmental conferences by proposing a Convention.

"The Convention on the Future of Europe", chaired by former French president Valéry Giscard d'Estaing, has discussed the issue of integration of the EU Charter of Fundamental Rights in the European law¹². Giscard d'Estaing proposed in the opening session of the Convention, as the final goal, achieved by consensus, a Constitution for European citizens, even if it will be named just "The Constitutional Treaty"¹³.

The Convention established 11 working groups on issues requiring detailed studies and among these groups was included "The Working Group II - Charter of Fundamental Rights".

On 13 June 2003, the European Convention presented the text of a draft Constitution for Europe which was adopted at the European Council in Thessaloniki (19-20 June 2003) and on 18 July 2003, the President of Convention, officially, presented to the European Council President, Silvio

⁶ www.ue.eu.int/summ/europeanconvention

⁷ Former President of Federal Republic of Germany

⁸ Conclusions – European Council, Tampere, October, 15-16, 1999, www.ue.eu.int/summ

⁹ Conclusions – European Council, Biaritz, October, 13-14, 2000, www.ue.eu.int/summ

¹⁰ Stelian Scăunaș, *Uniunea Europeană. Construcție. Instituții. Drept/European Union. Construction. Institutions. Law*, Editura C.H.Beck, București, 2005, pp. 132-133

¹¹ For example, Great Britain

¹² Along with Vice-presidents G. Amato (Prime Minister of Italy) and J.L. Dehaene (Prime Minister of Belgium) and 105 other members representing the governments and parliaments of the member states and candidate, Parliament and European Commission, the Convention was organized in working groups

¹³ European Convention, Speech delivered on the Opening Session of the Convention, 28.02.2002, Conv 4/02

Berlusconi, the final text of the Draft Treaty Establishing a European Constitution. Later, in 2004, EU leaders reached to an agreement on the Constitution, and thus it was approved by the European Council on 17-18 June 2004. European citizenship was widely approached in the Constitutional Treaty, being the most representative document, in which the European citizens' rights and obligations were clearly defined. The fact that the Charter was part of the Constitutional Treaty could have been regarded as a further guarantee of national fundamental values as they were mirrored by the Charter.

Treaty Establishing a Constitution for Europe was signed on 29 October 2004, in Rome, and had to enter into force after its unanimously ratifying. Ratification process in France and Holland had difficulties and despite attempts to unlock the process, it was decided to abandon it in favor of a new treaty. In 2007, the compromise is reflected in the emergence of a new Community legislation. This new legal frame is the Lisbon Treaty signed on 13 December 2007 and entered into force on the first of December 2009. The Lisbon Treaty gives full legal value to the Charter. A new Article 6 of the TEU affirms (paragraph 1) that the Charter "shall have the same legal value as the Treaties", specifying that it does not extend the competences of the European institutions. Although the Charter is not encompassed in a Protocol, its legal status is similar to that of Protocols, which, according to international law, have "the same value of the Treaty" to which they pertain, so is a subject of primary law.

Being not included in the treaty, the visibility of Charter to citizens could be reduced and this led to the European Parliament's decision for a solemn proclamation in order to become more visible and to increase its legal importance¹⁴. The Charter was undoubtedly the most—if not the only—really "constitutional" part of the Constitutional Treaty and for this reason it has formally been removed from the Lisbon Treaty and included in a new Declaration adopted in Strasbourg on 12 December 2007 by the three EU legislative institutions¹⁵.

So, the throughout of this document on human rights in the European Union was very tortuous, almost 10 years, moving from a standard of moral value (Nice) to a legally binding norm (Lisbon), a real cornerstone in the construction of normative community of law in Europe.

Moreover, although the Lisbon Treaty may not improve the protection of fundamental rights when compared with the Constitutional Treaty, it will definitely have such an effect if judged against the Treaty of Nice.

Goals and provisions of the Charter

The main *objective* followed through adopting the CFR is to strengthen the European system of human rights and the affirmation of common European values shared by the member states, values such as respect for human dignity,

¹⁴ Francisco Aldecoa Luzárraga, Mercedes Guinea Llorente, *Europa viitorului. Tratatul de la Lisabona/The Europe of Future. Lisbon Treaty*, Polirom, Iași, 2011, p.145.

¹⁵ The Charter was proclaimed for the second time by the President of the European Parliament, Hans Pottering, the President of the Council, José Sócrates, and the the President of European Commission, Emanuel Durão Barroso.

democracy, freedom, equality, respect of rights and fundamental freedoms under the rule of law.

In respect with the *provisions*, the Charter contains a preamble and seven chapters divided into 54 articles¹⁶. The Charter establishes a catalog of fundamental rights in six chapters whose titles represented the European Union's fundamental values, namely: dignity, freedoms, equality, solidarity, citizens' rights and justice. The seventh chapter, dedicated to the general provisions, specifies the conditions needed to be harmonized with the existing law, in particular the European Convention on Human Rights.

In the *Preamble* is developed the EU objective to promote an ever closer union, to strive to achieve a peaceful future, to meet the indivisible and universal values of human dignity, freedom, equality and solidarity in the spirit of democracy and rule of law, to strengthen the protection of fundamental rights by following the motto "*United in diversity*" and to contribute to a balanced and sustainable development of Europe, to the evolution of human society, to social, science and technologic progress.

Rights, freedoms and principles set out in the titles of the Charter are recognized by the Union and are regulated, as we have shown, in the seven titles:

(1) Dignity¹⁷ (right to life, right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labour);

(2) Freedoms¹⁸ (right to liberty and security, respect for private and family life, protection of personal data, right to marry and right to found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business, right to property, asylum, protection from removal, expulsion or extradition);

(3) Equality¹⁹ (equality before the law, non-discrimination, cultural, religious and linguistic diversity, gender equality, rights of the child, rights of the elderly, integration of persons with disabilities);

(4) Solidarity²⁰ (right of workers to information and consultation within the undertaking, 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 young people at work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection);

(5) Citizens' rights²¹ (right to vote and to stand as a candidate at elections to the European Parliament, right to vote and to stand as a candidate at municipal

¹⁶ <http://eur-lex.europa.eu>

¹⁷ Art.1-5, EU Charter

¹⁸ Art .6-19, EU Charter

¹⁹ Art.20-26, EU Charter

²⁰ Art.27-38, EU Charter

²¹ Art.39-46, EU Charter

elections, right to good administration, right of access to documents, Ombudsman, right to petition, freedom of movement and residence, diplomatic and consular protection);

(6) Justice²² (right to an effective remedy and to a fair trial, presumption of innocence and right of defense, principles of legality and proportionality of criminal offenses and penalties, right not to be tried or punished twice for the same criminal offence) and (7) General provisions²³ (scope, extent and interpretation of rights and principles, the level of protection, prohibition of abuse of rights).

The rights in the Charter are derived mainly from two sources: first, rights that already existed in EU legislation, such as, for its citizens, freedom of movement (Article 45) and secondly, the European Convention for Protection of Human Rights and Fundamental Freedoms (and its Protocols).

The Charter reaffirms the values and principles of European Union that wants to be a Europe of citizens before a Europe of states. The rights provided in the Charter constitute the general principles of the European Union law.

Regarding the concept of "European citizenship", the Treaty of Maastricht defines it as the possibility given to any individual possessing the citizenship of a member state to be considered a citizen of the European Union. It was established a citizenship of the Union, stipulating that "is citizen of the Union any individual who has the citizenship of a member state".²⁴

By the introduction of European citizenship, the signatories of the Treaty establishing a European Union wanted, among other things, to promote and strengthen the European identity, involving, in this way, the citizens in the process of European integration. Sources assert citizenship provide democracy and freedom to the EU citizens. Europe is a competitive and challenging market for its citizens, the model of society based on "individual rights and building of social cohesion".²⁵ European citizenship defines the belonging to a European political entity, but in the way the national law defines the status of citizen in the state and in the Union.

Advantages and effects of the Charter for European citizens

Lisbon Treaty reaffirms the principle of human rights protection as a fundamental principle of the European Union: "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the member states, shall constitute general principles of the Union's law".²⁶

Such a principle of the Charter is equal treatment. Equal treatment means that all EU citizens are treated equally, so as not to be a discrimination based on citizenship (article 21, paragraph 2, EU Charter). This principle is enshrined in the

²² Art.47-50, EU Charter

²³ Art.51-54, EU Charter

²⁴ Art. 8 pct. 1, TEC

²⁵ Cezar Bârzea, *Cetățenia europeană/ European Citizenship*, Ed. Politeia, București, 2005, p.19.

²⁶ Art.6 paragr.3

Lisbon Treaty and stipulates the *equal treatment between European citizens* in the same conditions as the nationals of that state. Article 23 TFEU contains clear and precise obligation to protect citizens outside the EU. Another example of equal treatment is the cost of consular services because all EU citizens should be treated equally in terms of fees and costs (Article 46, paragraph 2, EU Charter).

For questions regarding the competences of the Union, the European Union authorities in third countries have the duty to provide protection to its citizens. If EU citizens consider that the individual rights conferred by Article 23 TFEU have been infringed they can complain to the European Commission or can address a petition to European Parliament.

The right to make complaint to EU Ombudsman and the right to petition (Article 43, Article 44, EU Charter) are other protection mechanisms provided by the Charter of Fundamental Rights which positioned European citizenship in a fair and correct relation with the EU institutions.

EU citizen's right *to call the Ombudsman institution* has its origins in the Treaty of Maastricht in 1992. In terms of the treaty, every citizen of the Union may apply with petitions to the Ombudsman (European Mediator) established in accordance with Article 138E. The mediator is appointed by the European Parliament and is paid to receive complaints relating to cases about maladministration in the institutions or bodies of EU acting in their judicial functions, excluding Court of Justice and the Court of First Instance.²⁷

Maladministration means any poor or bad administration: if an institution fails to do the right thing, if it does something wrong or something it should not do. In this respect, we mention some examples: administrative irregularities, discrimination, abuse of power, absence or refusal of information, inequality. In fact, the citizen has the right to good administration, according to article 41 of EU Charter, and more, he can write to the European institutions in one of the languages of the treaties (paragraph 4.), so in their native language.

The Ombudsman investigates complaints and if is in its power will undertake an investigation. Complaints are, normally, subject to public treatment, but can be treated confidentially if the person addressed requests it.

One of the freedoms provided for in Chapter II, article 12, is “freedom of assembly and association” which leads to paragraph 2: “Political parties at Union level contribute to expressing the political will of EU citizens”.

This aspect is linked with a great novelty of the Lisbon Treaty and this is the establishment of *participative democracy*. By introduction of the *European Citizens' Initiative*, the treaty brings a significant innovation in European constitutional law because the status of an EU citizen is actually meant to be the fundamental status of the citizens of member states.

European Citizens' Initiative is a new comprehensive tool meant to strengthen democracy in the European Union. Through its use a significant step towards supranational direct democracy is made, and, on longer term, it could help in building an European public opinion.

²⁷ It is considered, however, that can not be concerned about maladministration budgetary funds, whereas this area is devoted to the special jurisdiction of the Court of Audits.

Legal basis for European Citizens' Initiative can be found in Article 11 (4) of the Treaty on European Union and in Article 24 (1) of the Treaty on European Union. Conditions and procedures apply to these citizens' initiatives are established by regulation adopted by the ordinary legislative procedure. At the initiative of at least one million citizens who are nationals of a significant number of member states, the European Commission may be invited to submit, within its powers, any appropriate proposal on matters where citizens consider that legislation of the Union is necessary in order to implement the treaties.²⁸

Thus, the Union nationals are for the first time directly involved in the European regulatory process. They are given the right to participate in an European citizens' initiative and from this point of view they are placed on the same level with the two legislative bodies (The European Parliament and The Council of Ministers).

In developing the participative democracy, the national parliaments are involved being considered as “guardians” of the principle of subsidiarity.²⁹ It takes place a reversal of direction of approach the problems. If, before the approach was made in the way the Union action is justified only if it can not be found solutions to national level, by the Treaty increases the involvement of national parliaments in assessing and addressing priority to local, national and regional issues and only then make the assessment at EU level. In this way, to national parliaments are given the power to influence a legislative proposal from the initial stages, when is still at the Commission, before the proposal is submitted for analysis to Parliament and Council.³⁰

In addition, in all procedures related to European citizens' initiative should be provided, especially, basic rights on equal treatment and effective legal protection. The recent enlargements of the Union were a milestone in the process of unifying Europe and brought benefits to citizens across the European Union. The Lisbon Treaty provides the Union accession to the European Convention on Human Rights in order to create a coherent human rights protection in Europe. This issue is definitely a progress in democratization of the EU.

Thus, the Charter of Fundamental Rights is a complement to the European Convention on Human Rights and Fundamental Freedoms, a document that gives legitimacy to European integration by establishing rights and responsibilities for citizens, reiterating the political and democratic character of the Union.

Conclusions

The Charter is a codification of minimum standards and fulfills a complementary role to the protection of fundamental rights given to citizens at the national level. The novelty that this legal document brings is a further guarantee of the rights of European citizens. It encompasses a range of rights recognized in Europe in various international documents in one common tool for all the member states.

²⁸ www.lisbontreaty.be

²⁹ Europe, Lisbon Treaty: http://europa.eu/lisbon_treaty

³⁰ Art. 12 TUE

The Charter is the most current statement of fundamental rights in the world and promotes human dignity, clarifies the rights of European citizens, highlights the values and principles of the Union, presents the intellectual and legal foundations of the European Union and guarantees the respect of fundamental rights by all EU institutions.

It must be recognized that a major step forward has been made because by granting the Charter legal status, the Treaty of Lisbon ensures its transformation from soft law into hard law. In any case, the Charter is important for citizens because the system of fundamental rights finally become visible and transparent and will not continue to be a complicated secret for insiders.

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