

## Opinion of the Economic and Social Committee on 'Towards an EU Charter of Fundamental Rights'

(2000/C 367/08)

On 25 February 1999 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on 'Towards an EU Charter of Fundamental Rights'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 July 2000. The rapporteur was Mrs Sigmund and the co-rapporteur was Mr Briesch.

At its 375th plenary session held on 20 and 21 September 2000 (meeting of 20 September), the Economic and Social Committee adopted the following opinion by 122 votes to 19, with nine abstentions.

### 1. Introduction

1.1. At the European Council held in Cologne on 3 and 4 June 1999, it was decided to draw up an EU Charter of Fundamental Rights. In its conclusions, the Council justified this by the need 'to make their overriding importance and relevance more visible to the Union's citizens'.

The European Council of Cologne felt that

'this Charter should

1. contain the fundamental rights and freedoms, as well as the basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and
2. "... also include the fundamental rights that pertain only to the Union's citizens"
3. and finally that "account should ... be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers ..., insofar as they do not merely establish objectives for action by the Union".

The European Council also decided that this Charter should be drawn up by 'a body composed of representatives of the Heads of State and Government and of the President of the Commission as well as of members of the European Parliament and national parliaments'.

1.2. The European Council in Tampere held on 15 and 16 October 1999 laid down the definitive composition of the body and its working methods. The European Council called for the working methods to be based on the principle of consensus, authorising the chairman to forward the draft to the European Council only on condition that the 'draft Charter ... can eventually be subscribed to by all the parties'.

1.3. Both the German and the Finnish presidencies emphasised repeatedly that this Charter of Fundamental Rights should also be an instrument that enables Europe's citizens to be more clearly involved in Europe and makes them more aware of their rights. The Committee naturally welcomes the practice of civil society organisations being consulted by the drafting body, which has now been named a Convention. As the European institution whose members are called upon in the Treaty to represent the interests of Europe's citizens, the Committee thinks it should have been involved to a greater extent<sup>(1)</sup>.

1.4. The tasks of the Convention are defined by the mandates of Cologne and Tampere, four points being of particular importance:

- The Convention is not an intergovernmental conference within the meaning of the EU Treaty.
- This means that it is not authorised to change the remit of the European Union.
- Its task is to draw up a draft Charter of Fundamental Rights within the terms of reference of the Union. When drawing up the Charter it must therefore bear in mind that it will be applied both in the framework of the European Union Treaty and in the framework of the Treaties establishing the European Communities. In other words, the Charter must also apply to Title V (CFSP) and Title VI (JHA) of the European Union Treaty. The ESC sees this comprehensive application of the Charter as very important because not only the EC Treaty affects citizens' interests with regard to their freedom and equality.

<sup>(1)</sup> Cf. Article 257 of the EC Treaty: 'The Committee shall consist of representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public.'

- The Charter of Fundamental Rights is thus addressed to the institutions of the EU and not to the Member States in the context of their own powers. But the Member States are of course bound by the Charter when they apply, implement or transpose Community law.

1.5. Whether or not the Charter should be legally binding was not made clear by the European Council in Cologne. The conclusions state only that it 'will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties.'

1.5.1. The chairman of the Convention, Roman Herzog, made it clear that the Convention would draw up the Charter on the assumption that it will be legally binding. Since the Spinelli draft, the European Parliament advocated such a binding document and it was even more explicit on this point in its resolution of 16 March where it said that its endorsement of the Charter would be dependent on such a charter being legally binding.

1.6. As far as the content of the Charter of Fundamental Rights is concerned, the European Council in Cologne set only minimum standards, though it went explicitly beyond the European Convention on Human Rights (ECHR) in its mandate. In his introductory address to the Convention, Roman Herzog said that it was time to stipulate that the obligations of the European Union towards its citizens must not be any less rigorous than those recognised by the Member States under their own constitutional law.

1.6.1. The 'breakdown' of the list of fundamental rights to be drawn up by the Convention is based on the consensus on three key individual rights Europe-wide (human dignity, self-determination and equality) on the one hand and on the principle of indivisibility of fundamental rights on the other. The draft Charter is divided into:

- dignity
- freedoms
- equality
- solidarity
- citizenship
- justice
- general provisions<sup>(1)</sup>.

<sup>(1)</sup> Convent 47, CHARTE 4470/00 of 14.9.2000.

## 2. General comments

2.1. The process of European integration was launched by Robert Schuman 50 years ago as a peace initiative; at first this naturally spawned mainly economic measures, but later a social dimension developed. The European Union is also described today as 'an area of freedom, security and justice', centred on people or citizens. In this connection, the drawing-up of an EU Charter of Fundamental Rights is a milestone in the European integration process. It formalises the pact founding an original and new political entity, and is also an expression of an identity based on free will, cooperation, democracy and non-violence. Individuals with the same rights and duties will develop a feeling of belonging, a common identity. If, moreover, civil society is also involved as much as possible in drafting such a catalogue of rights, this contact with grassroots opinion will also help to ensure that individuals do not perceive such legal provisions as being imposed from above, with penalties applied for non-compliance, but that they accept the need to respect them as a personal duty.

2.2. A Charter of Fundamental Rights based on ethics, moral standards and solidarity does not merely codify rights and duties, it also represents a common set of values. It thus supports the European Union as it moves from being a 'Community of law' to a 'Community of values' within which a European identity also has a chance to develop. In this way, the Charter can help ensure that Union citizenship is no longer perceived only in an abstract sense as the sum of all national citizenships, but is felt to provide practical 'added value'. The Charter also implies that every citizen should exercise his or her rights in a spirit of responsibility within the framework of organised civil society based on dialogue and mutual respect for rights and freedoms.

## 3. Specific comments

### 3.1. Content of the Charter

3.1.1. As a matter of principle, the Committee considers that civil and political rights, on the one hand, and fundamental social, economic and cultural rights, on the other hand, cannot be dealt with in isolation from each other. The common understanding in Europe is that fundamental rights are indivisible, related and interdependent; they may be the right to be defended, the right to be protected or entitlements. The Committee believes at all events that in a modern charter of fundamental rights it would be inconceivable to omit social, economic and cultural rights and that this would contradict the Cologne mandate.

3.1.2. However, the brief of the Convention for drawing up the Charter precludes any altering of the current division of responsibilities between the European Communities or the Union and the Member States.

3.1.3. For another thing, the affirmation of fundamental social rights in the EU Charter of Fundamental Rights does not prejudice the identity of the issuer of the act — whether European Union institution or State authority — against which claims for enjoyment of a right or respect of a principle may be lodged. The inclusion of social rights and principles in the European Union Charter of Fundamental Rights — in accordance with the Cologne mandate — does not in any way invest the European Community or the European Union with responsibilities which it did not already hold. It simply signifies that acts issued by the EU institutions or State acts adopted within the scope of Community law must:

- respect the social rights set out in the Charter;
- not constitute measures which would lessen the degree to which principles have already been put into effect;
- and in particular respect the requirement for non-discrimination, particularly with regard to the implementation of social rights.

3.1.4. The Committee warns that people's expectations will be disappointed if they are given a Charter of Fundamental Rights that cannot be enforced and which they would therefore have to see as pure rhetoric. However, the declaration that a right is justiciable, under the conditions suggested above, does not in any way presuppose at which level — Community or State — the right to benefit from that right may be invoked by the persons who enjoy it. In particular, where the Community and the Member States have rival powers, these powers must be exercised with due regard for the principle of subsidiarity (Article 5 TEC), without the adoption of the EU Charter of Fundamental Rights creating an exception to this principle.

3.2. Legal nature of the Charter of Fundamental Rights: such a charter can only be fully effective if it is clearly formulated and if procedures exist for applying it. The Committee believes that for political and legal reasons the Charter should be incorporated into the EU Treaty subject to the following conditions:

- in accordance with the Cologne mandate, the Charter may not change the Community's remit;
- the distinction must be maintained between directly applicable rights and rights that can be invoked by individuals, on the one hand, and programmatic rights on the other, in order to preserve the legal nature of existing competences<sup>(1)</sup>;

<sup>(1)</sup> The Committee refers here to its opinion of 22.2.1989, in which it notes: 'In the Committee's view, the instruments and procedures specified in the Treaty are the ones to be deployed to ensure that basic social rights are protected under the Member States' legal systems ...'.

- it must therefore be made clear that certain principles require the adoption of implementing measures.

It will depend very much on the final content of the Charter, which must be consistent with the Cologne mandate, the Charter or parts of it, and if so which parts, are to be incorporated into the Treaty. The Charter must be more than a solemn declaration; it must constitute a genuine political, social and civic commitment.

3.2.1. The announcement of an EU Charter of Fundamental Rights raised expectations and hopes; these must not be disappointed. People in Europe will better understand and accept a 'Citizens' Europe' if they know that, within that Europe, they have enforceable rights, and that duties also exist with which they have to comply. Apart from its legal significance, therefore, the Charter is also highly relevant in political and cultural terms.

3.2.2. A binding Charter of Fundamental Rights adds a further dimension to the European Union as 'an area of freedom, security and justice' in that the Union is formally committed to a clear 'Community of values'. Such a formal commitment is all the more significant against the backdrop of forthcoming enlargement and in the context of globalisation.

### 3.3. *Application of the Charter*

3.3.1. The Committee sees another possibility as far as applying the Charter is concerned, namely that those fundamental rights which the Convention agrees can be integrated become legally binding as part of the EU Treaty (cf. Article 6). The Council could then take measures under Article 7 against a Member State that seriously violates the principles listed in Article 6 (1). A ruling by the European Court of Justice would not be required in such cases. A binding procedural provision in the form of a monitoring system could be established to integrate the remaining rights. Such an approach is not incompatible with the principle of indivisibility of fundamental rights, since the Committee believes that the process of defining and revising fundamental rights at European level must anyway remain open-ended in order to allow for relevant developments. This applies for example to 'new' fundamental rights (in gene technology, bioethics, data protection, etc.), which in some cases are already covered in the EU Treaties (e.g. right to the protection of personal data).

3.3.2. The Committee therefore feels it would be vital to provide for an open-ended revision procedure for the future processing of the catalogue of fundamental rights. This procedure would exist alongside the integration procedure ('monitoring' system), as described in point 3.3.1. It would make sense to give the Convention the task of mapping out such an integration and revision procedure for submission to the Council. The revision procedure could also provide for evaluation programmes to be carried out at specific intervals.

3.3.3. Since it has not yet been finally decided how the Charter of Fundamental Rights is to be applied, the Committee cannot at the moment give its views on the issue of effective legal protection. This would involve discussion of any need for additional legal redress options (e.g. legal redress in respect of fundamental rights, action in the general interest, class action, and the right to express an opinion). The Committee reserves the right to present an additional opinion on this matter at the appropriate point.

#### 3.4. *The Charter and civil society organisations*

3.4.1. The development of fundamental rights reflects changing social, economic and scientific trends. Hence, the Committee also expressly welcomes the fact that the Convention proposal includes so-called 'new' fundamental rights and goes beyond the wording of the ECHR, which would not have been the case had the Union simply signed the ECHR, as has been proposed on many occasions. The European Court of Justice has also pointed out that ratifying the ECHR would require revision of the EU Treaty.

3.4.2. In this context and with reference to the Cologne mandate, the Committee particularly welcomes the fact that the Convention has included in the Charter the concept of human dignity, which is not yet in the ECHR. In so doing it is not just following the complex approach adopted in the UN Universal Declaration of Human Rights, but is also giving a signal that the Committee considers to be imperative, i.e. that as well as having a legal function the Charter should be provide a shared scale of values for the EU.

3.4.3. For the emergence of civil society structures in particular it is fundamentally important that as well as establishing joint objectives, basic existing values are recognised as worthy of protection and adoption in a spirit of dialogue and responsibility by civil society players.

3.4.4. The Committee believes that the existing Charter concept therefore presents a highly appropriate framework, in terms of its legal philosophy and legal order, for the development of civil society organisations.

3.4.5. In 1996, the Comité des Sages report entitled *For a Europe of civic and social rights*<sup>(1)</sup> stressed that a Europe close to its citizens required that a 'wide spectrum' of expertise (political, economic and social) to be involved in the European Union project.

The fact that the fifth paragraph of the preamble of Convent 47 refers to the Social Charters adopted by the Community and the Council of Europe as well as the ECHR is to be welcomed in this context.

3.4.6. Representatives of civil society organisations were involved on a very informal, ad hoc basis in drawing up the Charter of Fundamental Rights. Their opinions — some of which were extremely constructive — lacked any coordination, with the result that both clarity and potential synergy suffered. In the interests of developing a European 'model of democracy', civil society organisations must be included in this process — both formally and at an institutional level. It must be emphasised that the basic democratic challenge is to reconcile unity and diversity. Among the institutions, the ESC represents civil society organisations at European level. Its members are in direct and constant touch with civil society organisations<sup>(2)</sup>, and are thus able to provide added value by bringing their expertise to bear in a way that is wholly consistent with participatory democracy. The Committee comprises representatives of the various economic and social interest groups in civil society and should therefore be formally accorded advisory status in line with its remit — in such an integration and revision procedure.

<sup>(1)</sup> European Commission, DG V, ISBN 92-827-7697-2.

<sup>(2)</sup> See the ESC Opinion of 22 September 1999, OJ C 239, 17.11.1999, p. 30.

Brussels, 20 September 2000.

*The President  
of the Economic and Social Committee*  
Beatrice RANGONI MACHIAVELLI

## APPENDIX

**to the Opinion of the Economic and Social Committee**

The paper currently under discussion in the Convention has the following titles<sup>(1)</sup>:

- Article 1: Human dignity
- Article 2: Right to life
- Article 3: Right to the integrity of the person
- Article 4: Prohibition of torture and inhuman or degrading treatment and punishment
- Article 5: Prohibition of slavery and forced labour
- Article 6: Right to liberty and security
- Article 7: Respect for private and family life
- Article 8: Protection of personal data
- Article 9: Right to marry and right to found a family
- Article 10: Freedom of thought, conscience and religion
- Article 11: Freedom of expression and information
- Article 12: Freedom of assembly and association
- Article 13: Freedom of the arts and sciences
- Article 14: Right to education
- Article 15: Freedom to choose an occupation
- Article 16: Freedom to conduct a business
- Article 17: Right to property
- Article 18: Right to asylum
- Article 19: Protection in the event of removal, expulsion, or extradition
- Article 20: Equality before the law
- Article 21: Non-discrimination
- Article 22: Cultural, religious and linguistic diversity
- Article 23: Equality between men and women
- Article 24: The rights of the child
- Article 25: Integration of persons with disabilities
- Article 26: Workers' right to information and consultation within the undertaking
- Article 27: Rights of collective bargaining and action
- Article 28: Right of access to placement services
- Article 29: Protection in the event of unjustified dismissal
- Article 30: Fair and just working conditions

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<sup>(1)</sup> Convent 47 op.cit.

- Article 31: Prohibition of child labour and protection of young people at work
- Article 32: Family and professional life
- Article 33: Social security and social assistance
- Article 34: Health care
- Article 35: Access to services of general economic interest
- Article 36: Environmental protection
- Article 37: Consumer protection
- Article 38: Right to vote and to stand as a candidate in elections to the European Parliament
- Article 39: Right to vote and to stand as a candidate at municipal elections
- Article 40: Right to good administration
- Article 41: Right of access to documents
- Article 42: Ombudsman
- Article 43: Right to petition
- Article 44: Freedom of movement and of residence
- Article 45: Diplomatic and consular protection
- Article 46: Right to effective remedy and to a fair trial
- Article 47: Presumption of innocence and right of defence
- Article 48: Principles of legality and proportionality of criminal offences and penalties
- Article 49: Right not to be tried or punished twice in criminal proceedings for the same criminal offence
- Article 50: Scope
- Article 51: Scope of guaranteed rights
- Article 52: Level of protection
- Article 53: Prohibition of abuse of rights
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