

The protection of the European Citizen

The Charter of Fundamental Rights Addendum to the European Convention on Human Rights

The constitutional aspect of the EU aiming to cover the potential legitimacy deficit of the European policies in relation to the citizen.

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Introductory presentation

The Charter of Fundamental Rights

- ✓ It is the list of the fundamental rights that the Community legal order guarantees and the core of the circumstances re. the human rights that each and every EU candidate member state or even member state ought to qualify for.
- ✓ It comprises a text of constitutional nature, an essential constitution of the Union, which covers the found deficit of legitimacy against the national and the Community’s institutions in the framework of implementing the Community Law, and expanding, in comparison with the current European Convention on Human Rights of the Council of Europe, the list of the human rights with innovative regulations.
- ✓ It illustrates the common denominator of the Fundamental Rights and Values of the member-states of the Union, as this was underlined steadily by the Court of the Communities (now: European Court of Justice), long before it acquired legal force officially.

To the peak extent of its adoption, the Charter travelled side-by-side with the failed federation of Europe (the Charter was subject to editing in view of the federation of the EU), but it survived and acquired legal force with the Treaty of Lisbon of 2006.

The need for adopting a list of fundamental rights

- ▶ In the too slow process of the European integration, where the economic union was the priority, the fundamental rights comprised the necessary addendum to the structure and function of the EU.
- ▶ The constant demand for the fundamental rights as a component of the community legal order and values was noted by the judicial mechanism of the Union since the 1960s.
- ▶ Awareness of the gap was raised when the European unification began to expand to regions where the citizen’s freedom was at stake in a concrete and intensive manner. This gap could be filled with a list of citizen rights especially for the European Community.
- ▶ The initial formulation of the fundamental values of the Union defined the respective citizens’ rights and served the need for a balance between the interests of a public Union policy (enhanced in terms of powers) and the fundamental rights.

The gaps in the founding Treaties

- ▶ The founding Treaties of the Community did not include provisions on the fundamental rights, as special provisions were not considered necessary to include, mainly concerning the human rights. It was adequate that the European Convention on Human Rights was in force in the European continent. The division was regarded as visible. The European Community focused on the economic union, while the Convention consolidated the automatic presumption of jurisdiction for human rights.
- ▶ It was only in the preamble of the Treaty of Rome (1957) where it was underlined that the member-states were looking forward to the maintenance of international peace and freedoms and to the European Economic Community's contribution to the unification of the Europeans. The insight of the Community was at that time oriented to the economic union, and not to the political union. However, the pursuit of the abolition of discreet treatment based on nationalities, of the reinforcement of fair treatment of women and men in industrial relations, of the equal treatment of immigrant workers and of the rights of mobility and establishment was highlighted.
- ▶ Since then, the essential principles of the Community were reinforced in each and every revision of the founding treaty, the first being the Single European Act of 1986, in the preamble of which the desire of the member-states was expressed to invest mutual work on the promotion of democracy re. fundamental rights, which were recognized in the member-states' constitutions and laws.

Efforts to cover the gap

- ▶ Efforts for covering the gap in the founding treaties were made first in the Treaty of Maastricht and then in the Treaty of Amsterdam, making thus limited progress.
 - ❖ With the Treaty of Maastricht (1992), in the article 6.2, the perception was established that the EU will respect fundamental rights, as these are guaranteed by the European Convention on Human Rights and are stemming from constitutional traditions common in the member-states, as general principles of the community law.
 - ❖ The Treaty of Amsterdam (1997) proceeded to a more innovative step. In the article 6.1, it proclaims that the EU is established on the principles of freedom, democracy, respect on human rights and fundamental freedoms, and the rule of law. In addition, in the article 7, it highlights the protection of human rights as a component of the institutional structure of EU. It is possible that the capacity of each state as a member be suspended, if the member-state is involved in serious and systematic violations of the principles of fundamental human rights. This provision was expressed in the wave of new applications for joining the EU by the states of the former communist camp of Central and Eastern Europe and in light of the need for fulfilling the prerequisites for democracy, the rule of law and human rights.
- ▶ During the 1990s, the evaluation of the candidacy of the new member-states concerning fundamental rights was particularly strict. With the Treaty of Nice (2000), in case of a serious opposition to essential principles or fundamental rights, the necessary measures against the particular state would be activated.

The contribution of the Court of Justice

- ▶ The Court of Justice has played an essential role in the evolutionary development and the implementation of the fundamental rights, as it made them general principles of the legal Community order.
- ▶ Right from the start, the protection of fundamental rights within the legal Community order was guaranteed by the steady case-law of the Court of Justice, as this dominated since 1969.
- ▶ During the following years, a reserve of the Court’s decisions was created. In this way, the necessity for covering the gap in the fundamental rights within the framework of the legal Community order was recognised. The basic reasoning was that the human rights should be respected by the Community institutions and by the member-states while implementing the Community law.
- ▶ The Court of Justice, as the guardian of legality, pointed out that the respect for fundamental rights is part of the general principles of the legal Community order and comprises a prerequisite for legitimacy of the acts of the Community institutions.

The Court’s decisions about fundamental rights

- ▶ In the Stauder’s case in 1969, it was the first time it was underlined that the fundamental rights comprise a general principle of the Community law and are protected by the Court, without any further commentary about the identity, the nature or the extent of these rights. This decision was conclusive, as it set the basis and shaped the general principles that aim at the protection of the individual.
- ▶ The next case of Nold developed the content and the basis of the fundamental rights further. The Court stated that each and every Community legislation would be claimed as abolished, if it is against the fundamental rights of the national states.
- ▶ In Rutili’s case, the Court relied on the European Convention on Human Rights and implemented it in relation to acts of the Community and of the national institutions, which concerned the Community freedoms. With this case, the Court defined the interest in acts that concern the Community law and affect the individual freedoms, which however up to this point were formulated primarily in the European Convention on Human Rights and to a lesser degree in the European Social Charter, and only in regard to the workers’ rights.
- ▶ In the next decisions, the Court defined the specific versions of these principles, like the fundamental human rights, the prohibition of discriminations due to citizenship, nationality, religion, age, sexual orientations, the equality of men and women, the right for property, as well as the individual right to engage in commercial and professional activities.

The way to the Charter

- ▶ During the 1990s, one of the topics for discussion was the accession of the European Community/EU to the European Convention on Human Rights, so that relevant appeals against acts of Community institutions could be investigated, as there was a part of protection that could not be undertaken by the Convention.
- ▶ This effort was hindered by legal obstacles and was rejected, because a potential accession to the Convention would cause important change to the current Community system. Such a change, according to the Court, would exceed the limits of the authorization it was provided with by the article 308 of the Treaty of Community, and would be equivalent to a de facto revision of the founding treaties, without the appropriate revision procedure. For this reason, it became necessary to proceed to a revision of its case-law so that the superiority of the Community law would be shown and its decisions could be imposed on the member-states.
- ▶ In the summit of Cologne (June 1999), it was officially accepted that the traditional three Community freedoms did not guard the citizen against the political, social and economic claims that result from the Community law. It was found out that the more the authorities of the Union were expanded, the less the citizen was protected from the Convention. Even though the citizen could appeal to the European Court of Human Rights against acts of the member-state that conflict his rights, nevertheless s/he could not appeal to the same Court against acts of the Community institutions. The Community acts, however, are merely common acts of its member-states. The dilemma posed was simple: How could a supranational organization participate in an intergovernmental convention in which countries that are not members of the Community/European Union participate? The supranational law could be judged by a supranational institution only. Thus, the individual, the citizen would remain without litigation.

The final line for the adoption of the Charter

- ▶ The Charter has been worked out, with the EU focusing on Europe's future and the possibility of drawing up a constitution with a federal perspective. Finally, the idea of fundamental rights matured alongside the ongoing process of economic and political integration. The Commission has drawn up a Charter of Rights and Freedoms for all European citizens.
- ▶ This ambitious undertaking was pursued by a mixed body, the Assembly, which represented the governments, the national parliaments, the European Parliament and the European Commission, with two representatives from the Strasbourg Court and Luxembourg participating in its work as observers.
- ▶ The Convention, by mitigating conflicting interests, led to the final text, which achieved "1. Harmonization of the Charter with the definitions of the Treaties 2. The non-enlargement of EU competences 3. The development of an autonomous system of protection of rights within the Community legal order 4. The Charter's symbiotic relationship with the ECHR 5. Avoidance of creating problems that would require the revision of the constitutions of the EU Member States 6. Avoidance of additional financial costs". The sources of ideas are the ECHR, the constitutional provisions of the MS and the ECtHR case law.
- ▶ The problem of adopting the Charter was borne by the Intergovernmental Conference which led to the Nice Treaty of 2000, giving the Charter only a proclaimed character. EU Heads of State were not convinced of the undertaking, in particular in regard to the impact of the Charter on the exclusive competences of the MS, although the relevant provisions guaranteed that their sovereign rights would not be restricted. It has thus failed at the last minute to make the explicit reference to the Charter an addition to the Treaty of Nice, as it would have indirectly acquired binding force.
- ▶ The Treaty of Lisbon, 2006 provided a solution re. fundamental rights, and the Charter became legally binding. According to Article 6 TEU, the Union now recognizes the rights and freedoms as well as the principles contained in the Charter.

Character of the Charter

- ▶ It is a guide for citizens to understand the Union and the values on which it is trying to be built. It could, by claiming legitimacy, pave the way for closer citizen identification with the Union.
- ▶ It recasts the Union's values for civil protection rights. The aim is the Union's political and moral legitimacy. The Charter was intended to respect fundamental rights as the basis of the Union, as these were incorporated by the ECJ as general principles of Community law.
- ▶ It is in line with the definitions of the founding treaties and has strong legal primacy. The Charter modernizes and enhances the level of protection of European citizens by acquiring legally binding nature and formal validity.
- ▶ It includes rights that reflect common values that foster European integration. The expectation was to provide the legitimization basis, as the MS have surrendered part of their sovereignty to the Union, which would justify both its supranational status and the grant of sovereignty to the Union.
- ▶ Article 51 sets out the institutional framework of the Charter. No new powers are added, nor will the Union dictate to the MS how to implement the protection of the Charter's fundamental rights.
- ▶ A separate and integrated protection system designed within the Community legal order was chosen to serve the needs of the Union. Although the ECHR was not considered sufficient as a protection institution for the Union, the Charter's relationship with the ECHR is privileged. The Charter refers explicitly to Article 52 of the ECHR in order to clarify the meaning, content and restrictions re. the exercise of many of the fundamental rights it protects. It is an inventive solution designed to contribute greatly to the harmonious coexistence and sharing of responsibilities between the two systems of legal protection.

Points of compromise

- ▶ The grave concern about the possible consequence the Charter might have in the sovereignty of the MS was decreased, and any possibility of new restrictions on their sovereignty or problems that would impose constitutional reforms on the MS were eliminated. It is clear that the Charter does not confer new powers, and that the division of powers (i.e. the nature of subsidiarity) between the Union and the MS does not change. Thus, there is no enlargement of authority in the field of human rights, and no enlargement in the application of the Union law to an extent that would affect the rest of the powers of the MS, and at the same time there is a definite role of the WEU in dealing with Charter cases.
- ▶ Members of the Union, which traditionally had strong social welfare systems, feared that widespread realization of these rights throughout the Union would entail an increase in the resources required to cover them. Ultimately, the financial costs were avoided thanks to the scarce protection foreseen for many of the social and solidarity rights.
- ▶ The compromise reached relates to rights conferred on national and Community institutions in the application of Community law. The rights are exercised under the conditions laid down by national law and practice. Restrictions on rights and freedoms may be imposed, when these restrictions are necessary and are genuinely responsive to objectives of general interest recognized by the Union, or the need to protect the rights and freedoms of third parties, in the spirit of democracy and pluralism. In this context, the wording of the Charter is also harmonized with regard to the interpretation of its provisions so as not to deviate from the constitutional traditions of the Member States.

Charter Content

- ▶ The ECHR, the constitutional provisions of the MS, the jurisprudence of the ECHR, the ECJ/WEU and the constitutional conditions under which it is harmonized are the source of inspiration and the idea of the Charter.
- ▶ The ECHR is the most important source of inspiration for the Charter and has become a key pillar for the protection of fundamental rights. The Charter views it as a source of ideas, but does not repeat it. It updates, in line with current perceptions, the provisions that refer to civil rights, complements it with social and solidarity rights, as well as third generation rights, or exceeds it with emerging rights adapted to Union values.
- ▶ The Charter did not follow the pattern of classifying rights into traditional categories, i.e. individual, economical and social rights. It also deviates from the American categorization model of low social protection, as well as from the developing world model, which is maximalistic in relation with terms but ineffective.
- ▶ The Charter classifies rights into themes corresponding to the fundamental values of the Union, irrespective of the traditional nature of the right, may it be either political or social. As with traditional rights, it recognizes new additions, which reflect social evolution, or in any case constitute imaginative configurations to cover new versions of older rights; such as the right to individual integrity, the right to personal consent re. medical and biological matters, and the prohibition of eugenic practices that reproduce clones of the human species. At the same time, there is a need to establish independent authorities for the effective protection of personal data. The right to form a family is distinct from the right to marry, paving the way for a non-marriage family, irrespective of the heterosexual nature of the couple.
- ▶ The new categorization is not random, it is largely combined with the fate of the right, whether it will be established as conducive or not.
- ▶ In its preamble, the Charter refers to Europe's shared intellectual and moral heritage, emphasizing the Union's commitment to preserve and promote common values, while respecting the diversity of cultures and traditions of European peoples. To this end, the need to strengthen the protection of fundamental rights in the light of social change, social progress and scientific and technological developments is emphasized.

The individual chapters of the Charter

- ▶ In the section on **dignity** (Articles 1 to 5), the absolute, without any limitation, rights are classified: Inviolability of human dignity, the right to life, the right to the integrity of the person, the prohibition of torture and of inhuman or degrading treatment or punishment, the prohibition of slavery and of forced labor.
- ▶ The section on **freedom** (Articles 6 to 19) lists the rights to be derived: The right to liberty and security, respect for private and family life, the protection of personal data, the right to marry and to found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association. This category also includes freedom of art and science, the right to education, freedom of profession and the right to work, business freedom, the right to property, the right to asylum, and protection against mass deportation.
- ▶ The chapter on **equality** (Articles 20 to 26) also guarantees the following rights: Equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, children's rights, the rights of the elderly and integration of people with disabilities into society. The ban on discrimination on the basis of nationality is being fully consolidated.
- ▶ The section on **solidarity** (Articles 27 to 38) pertains to non-conductive rights: They appertain to the right of workers to information and co-consultation within the enterprise, the right to negotiate and take collective action, the right to access employment services, protection in the event of unjustified dismissal, the safeguarding of just and favorable working conditions, the prohibition of child labor, family and professional life, social security, the protection of the environment and consumer protection.
- ▶ **Citizens' Rights** (Articles 39 to 46) recognize the right to vote and stand as a candidate in European elections, as well as in municipal and community elections, the right to access documents relating to the European Ombudsman, the right to petition, the right to good governance, freedom of movement and residence, diplomatic and consular protection.
- ▶ The section on **justice** (Articles 47 to 50) provides for the right to a fair trial by an impartial and independent court of law, the presumption of innocence, the right to a defense, the principles of lawfulness and proportionality of offenses, the right not to be tried or punished twice for the same criminal offense.

Scope: Entities and recipients of Rights

- ▶ Fundamental rights concern the European citizen as the recipient. Within this range, the rights of non-EU nationals are not included. Protection agents are the bodies of the Union, including the agencies, as well as the national States, in accordance with the principle of subsidiarity, in the context of the application of the Union law.
- ▶ Rights, as these are safeguarded, can only take effect in the context of the Union's competences and the application of its law. Consequently, the above, the Community institutions and national States, respect the rights, respect the principles and promote their implementation in accordance with their respective responsibilities and within the limits of the Union's powers, as provided for in the Treaties. Obviously, if this provision were not to be applied, the Charter would remain largely ineffective, since the application of the Union law is entrusted, in addition to the Community institutions, to the national institutions. In relation to the constitutions and the ECHR, the system of legal protection sets out a distinct scope for the application of the internal legal order of the Member States of the Union.

The Charter's relation to the ECHR

- ▶ The Charter covers the gaps in the protection against the application of Community law, in particular by the institutions, when human rights are violated. The Charter does not compete with the ECHR, either "updating" or "simplifying" its provisions. It also includes rights, which are loans from the ECtHR case law. To a large extent, it supplements the ECHR with new rights.
- ▶ The Charter includes rights that go beyond the ECHR, like third generation rights and the right to the environment on the principles of sustainable development, either as social or economic rights, which are classified as solidarity rights. More civil rights are added to the ECHR too, including the right to good administration, the protection of personal data, the consumer's protection, or the extension of the right to education at all levels. In addition, children's rights and their protection and care, are enacted. The rights of the elderly are envisaged, with a view to a dignified and independent life and to their participation in social and cultural life. Similar rights are also provided for people with disabilities. These latter rights find their origin of inspiration in the European Social Charter of 1995. Health care provision with the right of accessing preventive medicine and the benefits of medical care means the rights in the "solidarity" section of the Charter, which are also worth noting. The protection of personal data, as well as the eugenic practices of human clone replication are in line with modern technology. The issues of eugenic practice had already been addressed in 1997 by the Council of Europe with the Convention on Human Rights and Biomedicine.

Distribution of jurisdiction between the ECtHR and the CJEU Courts

- ▶ Appeals against national States, excluding cases concerning the application of Community law, are to be decided by the ECtHR. The CJEU has jurisdiction to deal with appeals of Community institutions and national States regarding the application of Community law. This is the basic, desirable distinction.
- ▶ The relationship between the Charter and the ECtHR is defined by the combined reading of Articles 51, 52 and 53 of the Charter. Article 51 provides for the protection body, the institutions and the States, within the remit of the implementation of the Union law, and the recipient, without adding any new jurisdiction or power to the Union as provided for in paragraph 2, specifying the boundaries with regard to national states and their legislation. It will not affect national legislation to an extent that its revision will be required. When the Charter refers to the legal traditions of the states, it has this objective. At the same time, the CJEU will maintain a steady dialogue with the laws and perceptions of the Member States regarding the authentic interpretation of the provisions of the Charter. As has not been the case in the jurisprudence of the ECtHR, it is very likely that the CJEU will gradually develop a homogenized approach to human rights without hesitating to impose the level of perception of the more advanced states.
- ▶ By the provisions of the Charter, the countries that implement the Union law are included in the control of acts of the institutions of the Union too. While until then the states were subject to the ECtHR commitments, this summary in the provisions of the Charter may give rise to a dualism of protection, or even conflict, between traditional rights exercised in accordance with the ECHR and in provisions updated or expanded by the Charter, particularly re. civil and political rights.

The jurisprudential matter

- ▶ What is the interaction between the ECHR and the Charter?
 - ❖ Article 52 states that the rights of the Charter that correspond to the rights of the ECHR, their meaning and their scope are those conferred by the ECHR. The meaning and scope of the Charter's rights are defined not only by the texts of the ECHR, but also by the case law of both the ECHR and the CJEU. This provision, however, does not prevent the Union law from being granted more extensive protection. The CJEU offers the opportunity to broaden the interpretation of the Charter's fundamental rights provisions. Article 53 of the Charter specifies that no provision of this Charter may be interpreted as restricting or affecting human rights within their respective scope of the Union law or of the national constitutions of all Member States and in particular of the ECHR. The provision of Article 52 seeks to create a uniform application of the Charter's arrangements to those of the ECHR, requiring the user of the former to resort to the latter, when it comes into contact with the provisions of the Charter, which are at the same time provisions of the ECHR.
- ▶ A combined reading of Articles 52 and 53 of the Charter leads to the following conclusions:
 1. Regarding the provisions of the Charter that correspond to the ECHR, the Union recognizes that the ECHR and the case law of the ECHR are a source on which the interpretation of the Charter by the institutions of the Union, including the CJEU, will be based.
 2. This general principle is subject to self-evident exceptions, which automatically result from the differentiated text of certain provisions of the Charter in relation to that of the ECHR. There is, therefore, a first point of deviation from the ECHR, which the authors chose to be defined in the Charter explicitly.
 3. The provisions of Articles 52 and 53 leave room for divergence from the ECHR and its case-law in relation to all other provisions which fall differently to the Charter, provided that these divergences will lead to a wider protection of Union citizens. The protection afforded by the ECHR and the ECtHR case law is the minimum that can be improved by differentiation. This finding leads to the reasonable conclusion that, within the scope of the Charter, a probable distancing from excluded to depart from the ECtHR jurisprudence cannot be excluded and therefore that we may have a jurisprudential dualism, beyond the dualism of the protection system.

ECtHR and Charter Cohabitation Issues

What is the potential problem of the ECHR and Charter cohabitation with the reality of two separate legal protection systems?

- ▶ Christos Rozakis, through arguments, promptly pointed out the possibility of juristic dualism. The Union is undoubtedly a powerful attraction. The ECHR is moving in a traditional context, as set up by the Council of Europe, with a view to developing and defending human rights. As he points out, the redefinition of European safeguards should take this into account in an effort to modernize and streamline their operation.
- ▶ A number of authors point out that the Charter, without altering or extending the powers of the Union, forms part of Community law with legal superiority over the constitutional orders of the MS.
- ▶ Nevertheless, the problem of potential case law dualism remains. As Rozakis further observes, the ECHR and the ECtHR case law may be a major source of inspiration for the Charter and the interpretation of its provisions, but what will emerge from the jurisprudential development of the CJEU as regards the implementation of the Charter? He also notes that the increasing use of the Charter as the basic text can have a long-term effect on the Charter's removal from the ECHR. It is very likely too that the CJEU will develop its own jurisprudential principles for interpreting the Charter, differently from ECtHR. As far as he can predict, irrespective of the extent to which the impression of the ECHR's priority has been cultivated, the mere fact that the CJEU will interpret the Charter and will be able to be led to a jurisprudence of its own, benefiting even from the most favorable provisions of the Charter for the citizens re. the promotion of wider protection, differentiation from the ECHR will be inevitable.

Charter implementation

- ▶ The Commission adopted the 'EU Strategy for the Implementation of the Charter of Fundamental Rights' and has been implementing the Charter since 2010.
- ▶ At the same time, the European Parliament recommended that Impact Assessments should give importance to fundamental human rights. It also urged the Commission to confirm that the influence of fundamental rights on the EU legislation and the implementation by MS will be included in the EU evaluation reports on the implementation of the European law.
- ▶ The CJEU has been brought into line with the provisions of the Charter, bringing European legislation under the European law. Reference to the Charter by the CJEU after the enforcement of the Lisbon Treaty is crucial. There has been a gradual increase in the decisions that the CJEU has referred to or has resorted to in the Charter, especially since 2010, making it thus the main interpretative body of the Charter. Equally, the CJEU controls all the legislative work of the Union institutions in light of the Charter, and inspires and encourages the implementation of the decisions of the institutions in the context of the implementation of the Charter. This is how the completion of the EU law is achieved.
- ▶ Extending the application of the Charter to the MS will lead to a transposition into the national judicial framework, i.e. the Charter will be applied ex officio by the national courts. Therefore, the issue of interpretation is crucial. The goal is homogenization. However, the CJEU will exercise control over the national decision. The obligation to comply with the provisions of the Charter also extends to the interpretation of the national law without implying that the national level of human rights protection is being superseded. The primacy of the Union law dictates that national rules, including constitutional ones, cannot undermine the effectiveness of this law in the territory of each MS. It should also be noted that the fundamental provisions of the Charter may be substantiated by citizens in their actions before national courts, in the sense of a direct/horizontal effect.

Advantages of the Charter

- ▶ The Charter comprises the stronghold of freedom in an expanding Union, the expanding powers of which affect the freedoms of the European citizen.
- ▶ It falls within the general framework of the evolution of the Union and thus became part of the debate on the European constitution and the reforms undertaken at the beginning of the 2000s. It therefore reinforces the expected aspirations for EU integration in terms of fundamental rights and is at the same time an important step towards the possible revival of the idea of a Union constitution.
- ▶ The Charter is also expected to develop a regulatory function by influencing the shaping of policies and the Union, constituting the basis for legal scrutiny of the adoption of Union regulatory acts as regards the impact on fundamental rights of citizens.
- ▶ It empowers the citizen against decisions and other Union regulations affecting him/her, but is also an added value in the European area.
- ▶ It contributes on the one hand to tackling the deficit of democracy and the rule of law, and on the other to the institutional maturation of the Union.
- ▶ It is the first cohesive and accessible text to European citizens, which brings together the scattered responses that the institutions and the MS have been trying to give to the overwhelming deficit of democracy and the rule of law. At the same time, it is the first text of the "constitutional text", because it comprehensively records the rights of the European citizens and of those who reside legally on the territory of the Union and affect every aspect of their private and public life.
- ▶ It fills the void in the control of Community acts of either the institutions of the Union or the national states. What is more important is the Charter's contribution to scrutiny of the criteria for examining the readiness, in terms of human rights, of the candidate new states to join the Union.
- ▶ It contributes to the homogenization of both the MS and the candidates as regards the level and extent of human rights protection in the region of the Union. Through appeals, the CJEU will have a significant opportunity to develop the legal provisions of the Charter, as has been the case with the ECtHR in relation to the ECHR.

Criticism re. the Charter

On the other side, there are objections:

- ▶ Claims re. the respect for fundamental rights as a key cornerstone of the Union law have so far left little to the European public. More specifically, it is emphasised that these claims have not changed the picture re. the reinforcement of the legitimacy of the competences of the institutions of the Union and re. the adoption and implementation of Union law, as sought by the adoption of the Charter, as the political power appropriate to solve common problems instead of problems of the states. The Charter, in the same contradictory view, remains a formally proclaimed manifestation of the general confession of respect for fundamental rights that the CJEU has previously specified as general principles. The Charter merely gives a general guideline to the ECJ on how to apply and interpret the fundamental rights that existed before.
- ▶ Similarly in another contradictory view, the Charter fails to specify that certain principles – especially economic ones – can or should be regarded as individual rights even if they coincide with policies that the Union must pursue. For example, the right to open market economy through free competition. This principle is protected against the limitations and the abuses activated through the commitments and the distortion caused by state intervention.
- ▶ According to another critical intervention, the Charter also fails to demonstrate the right to implement, something very timely, i.e. monetary policy, the primary purpose of which is to maintain price stability. Defects not conducive to self-evident application are found. The citizens' right to good administration is pioneering, but what would be expected is a system of faithful observance of the rule of law, transparency, democratic procedures combating corruption, an administration that facilitates non-discrimination.

Conclusion

- ▶ There is no doubt that human rights are the great conquest of European post-war civilization. The gradual consolidation of their effective implementation at least in the European area is unique, firstly through the Strasbourg mechanism, which is extended to terms of immediate implementation re. the MS of the Council of Europe, and then through the adoption of the Charter in the context of the application of Community law.
- ▶ Individual appeals have been the major success among European states, allowing anyone claiming an infringement of their rights by the State which is within the jurisdiction of the ECtHR to seek redress by turning against the State who affects them. Thus, gradually human rights have become, through claims for restitution of the affected rights of citizens, a source of demand for policies. These demands have sometimes been linked to major political problems, like violations of rights due to invasion, intervention or air raid, or occupation.
- ▶ There are some major political issues that underline the content of specific individual appeals. The ECtHR has artificially attempted to avoid highly political problem-solving cases. Thus the mechanism sets limits on a competence intended to satisfy every victim of abuse. If this is the perspective of the CJEU, then announcements like that the Charter is expected to develop a creeping regulatory function, directly or indirectly affecting the formulation of Union policies and actions, or that the European citizen is no longer vulnerable to the powers of the institutions of the Union and any law-enforcers, are not unlikely to be disproved as expectations and to be confined to low-level policy issues only, and it is likely that the judiciary will give in dramatically when a high and fundamental policy issue is raised as a matter of citizen reparation.

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