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EUROPEAN UNION'S CHARTER OF FUNDAMENTAL RIGHTS

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Abstract

Treaty establishing the European Economic Community did not include any reference to fundamental rights or human rights. Even successive acts of European Union did not include any reference to them up to the European Union Charter of Fundamental Rights. The Charter provides political, social and economic rights conditions for European Union citizens and for EU resident citizens. The Charter sets out the rights and principles that must be respected by the Union in the implementation of Community law. The rights involved in the Charter are classified into four categories:

1. *common fundamental freedoms, present in the constitutions of all member states;*
2. *rights reserved for citizens of the Union, in particular with regard to the right to elect their representatives to the European Parliament and enjoy diplomatic protection;*
3. *economic and social rights, those relating to labor law;*
4. *modern rights, those resulting by the several developments in technology, such as the protection of personal data or stopping eugenics and discrimination because of sexual orientation.*

The effect of the Charter extends on the European Union institutions and its member states, but only when they implement EU laws. The Charter does not extend its effects outside the European Union. Article 51 (1) of the Charter is addressed to EU institutions, bodies established under the law of the EU member states and the EU, when they implement the laws of the Union. The EU cannot promulgate laws to bring the right set out in the Charter, except when this provision is exactly predicted in Treaties.

However, individuals could not lead a trial member, for breach of Charter rights, unless the Member State concerned has implemented EU law. This point has been the subject of debate.

Keywords: EU Charter of Fundamental Rights, human rights, Court of Justice, European institutions.

1. Introduction

The involvement of the EU has gradually grown from ignoring human rights to acknowledging to be founded on the respect for human rights and fundamental freedoms. The reasons for this development are many. First of all is the legal and political evolution, EU has become a political actor strongly influencing in many spheres¹. Then the Community law has challenged the

¹ Felicetta Lauria, "L'Unione Europea Origine, sviluppi, problemi attuali", Torino 1996.

legitimacy of the whole system. The European Court of Justice, in many cases has affirmed that the law of the European Community did recognise fundamental rights as general principles of its legal system.²

EU Charter of Fundamental Rights was adopted at Nice in December 2000³, with a joint initiative of the European Parliament, the European Council and the Commission, but the Charter obtained the status of EU primary law only with the entry into force of the Lisbon Treaty in 2009⁴.

2. The contents of EU Charter of Fundamental Rights.

EU Charter of Fundamental Rights is divided into six main chapters entitled:

I. *Dignity*. Human dignity is inviolable. In this part guarantee the right to life, the right to physical and mental integrity, prohibition of torture and inhuman treatment or degrading treatment or punishment, prohibition of slavery and forced labor⁵.

II. *Freedom*. This chapter includes the right to liberty and security, the right to a private and family life, protection of the right to marry and to found a family, the right to privacy, freedom of thought, conscience and religion, expression and Information, assembly and association, freedom of arts and sciences, the right to education, to choose a profession and work, the right to property. Charter stipulates more rights than the ECHR, as Article 16 the right to establish a business or entrepreneurial freedom⁶.

III. *Equality*: is expressed as equality before the law without discrimination between men and women, without distinction on grounds of religion, or language to cultures, a non-discrimination equality. It provided the rights of children and the elderly, and the integration of persons with disabilities⁷.

IV. *Solidarity*. In this section, provided the rights of workers such as the information and advice, to talk, to be protected in the event of dismissal unjustified, and have fair working conditions and fair. Prohibited child labor and protect young people in the workplace. Determined that the family enjoys legal protection, economic and social. Entitled to social security and health, she healthcare, environmental protection and that of the customer⁸.

² In the case *Internationale Handelsgesellschaft*, the Court added that the common constitutional traditions of member States were a primary source of the European Community (later EU) law.

³ Sokol Bana, Erjona Canaj. *European Union Law*. ISBN 9928407088, 9789928407085. Tirana in 2011.

⁴ Article 2 of the Lisbon Treaty establish that *the renovated European Union is founded on the common values of Member States that are the respect of human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of persons belonging to minorities. Moreover, the European societies share the principles of pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.*

⁵ Articles 1 to Article 5 of EU Charter of Fundamental Rights.

⁶ Article 6 to Article 19 of EU Charter of Fundamental Rights.

⁷ Article 20 to Article 26 of EU Charter of Fundamental Rights.

⁸ Article 27 to Article 38 of EU Charter of Fundamental Rights.

V. *Citizenship* or rights of citizens where are sanctioned rights only of European citizens who are citizens of the Member States, such as the right to vote in the EU Parliament and municipal elections, the right to recognition by the EU documents, the complaint before the Ombudsman EU, the right to file a complaint before the EU Parliament, freedom of movement and residence in any EU country, the right to diplomatic protection from any member State of the EU if the country does not has an embassy or a consulate in the country where it is⁹.

VI. *Justice*. This section is addressed effective guarantee and manner of establishing instead of a right violated. It is guaranteed the right of effective remedy and fair trial, presumption of innocence and right to defense, and the right not to be tried or punished twice in criminal proceedings for the same criminal act¹⁰.

3. European Charter in front of ECHR.

The European Charter is reflected all the rights of so-called "first generation" and "second generation" who are civil rights' political, economic, and cultural background social. The Charter guarantees the traditional rights that have been provided in previous acts regional and international.

The Charter did not establish new rights, it does not establish new competencies for the EU nor creates new obligations for member states, it "dispose" of existing rights in European law and principles set out in the ECHR¹¹.

The rights provided represent a minimum standard of ensuring rights and the member states can guarantee more freedom and rights to the "European citizens". Articles of the Charter shall not be interpreted as limiting or infringing on the rights and fundamental freedoms¹². For those rights in the Charter that are provided also in the ECHR, the meaning and the scope of these rights is the same as those rights that provides the ECHR.¹³

Besides civil and political rights, it also enshrined economic, social and cultural rights; the Charter also mentioned consumer protection and environmental protection as principles to be taken into consideration in the Union's policies. A few articles grant rights only to European citizens such as the right to vote, the right to good administration vis-à-vis EU bodies, the rights to access to EU documents, to access the EU Ombudsman, the right to diplomatic protection by

⁹ Article 39 to Article 46 of EU Charter of Fundamental Rights.

¹⁰ Article 47 to Article 51 of EU Charter of Fundamental Rights.

¹¹ In the general provisions of the Charter of Fundamental Rights of the European Union said that the purpose and meaning of the rights protected by it is the same as that provided by the ECHR.

¹² Article 53 The level of protection, the Charter of Fundamental Rights of the European Union.

¹³ Article 52, paragraph 3, Scope and interpretation of rights and principles of the Charter of Fundamental Rights of the European Union.

any EU member State if one's own State has not an embassy or a consulate in the third Country where the person is¹⁴.

In distinction from the ECHR in the Charter are provided that these rights are absolute and can not be restricted because of their restriction would be a violation, not specified, as is the ECHR, absolute rights. Charter stipulates putting restrictions criteria¹⁵, which are:

- restriction should be imposed only by law,
- restriction must respect the essence of rights and freedoms,
- restriction must be in accordance with the principle of proportionality,
- restriction must decide if it is necessary for accomplishment of the objectives and general interest recognized by the European Union.

The European Court of Justice has the duty to determinate the absolute and unlimited rights because it is her competence the interpretation of the acts and their legitimacy¹⁶.

All rights provided in the European Charter are required to be guaranteed by the EU institutions and member states. Community acts must be in accordance with the rights and freedoms provided in the Charter, moreover all community right during the application should respect the provisions of the Charter¹⁷.

Non ratification of the European Constitution brought the need of reforming the process of institutional European Union framework and the defense sector of human rights. Was requested that the human rights charter should be continued to be the main instrument of care during rights and folded a rate which make it legally binding its field of application¹⁸. This would be accomplished through the Lisbon Treaty which in Article 6 of the Charter provides for the mandatory obligation for all member state, giving it legal statute of Treaty¹⁹. This status obliges the European Union in its legislative activity not only respect the rights of the Charter but also the European Convention on Human Rights.

¹⁴ The European system for the promotion and protection of human rights Council of Europe OSCE and European Union, Inversity Course, University of Padova, Human Rights Center.

¹⁵ Article 52, paragraph 1, Scope and interpretation of rights and principles of the Charter of Fundamental Rights of the European Union.

¹⁶ Jacque, J.P. The European Union's institutional rights. ISBN 987-9928-4069-2-7.

¹⁷ Article 51 Scope of application of the Charter of Fundamental Rights of the European Union.

¹⁸ Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union. Publication of: Ministry of European Integration. Tirana 2010.

¹⁹ Article 6 of the Treaty on European Union expresses: "1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions. 2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties. 3. 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."

The Lisbon Treaty contains a clause who's give mandate to the EU to accede to the ECHR as a party in its comunitare right²⁰ and Protocol 14 to the ECHR of changing what it accomplished. Poland and the United Kingdom signed an Additional Protocol regarding proceedings before the Charter, which states that:

“1 The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.”

This means that individuals can complain about EU legislation or national legislation implementing EU legislation, if they think it is not respecting the Charter. National courts can require guidance on the correct interpretation of EU law from the European Court of Justice through preliminary proceedings in accordance with Article 267 of the Treaty on the Functioning of the European Union.²¹

The Czech Republic, regarding the application of the Charter statuses and is expressed with the “Declaration by the Czech Republic on the Charter of Fundamental Rights of the European”²². The Declaration reminds “*that the provisions of the Charter of Fundamental Rights of the European Union are addressed to the institutions and bodies of the European Union with due regard for the principle of subsidiarity and division of competences between the European Union and its Member States, as reaffirmed in Declaration (No 18) in relation to the delimitation of competences..*”

The subsequent part of the Declaration is:

““2. The Czech Republic also emphasizes that the Charter does not extend the field of application of Union law and does not establish any new power for the Union. It does not diminish the field of application of national law and does not restrain any current powers of the national authorities in this field. 30.3.2010 Official Journal of the European Union C 83/355 EN Declarations 355

3. The Czech Republic stresses that, in so far as the Charter recognises fundamental rights and principles as they result from constitutional traditions common to the Member States, those rights and principles are to be interpreted in harmony with those traditions.

4. The Czech Republic further stresses that nothing in the Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective field of application, by Union law and by international agreements to which the Union

²⁰EU adesion to the ECHR is a discussion that continues in the doctrine of the European Union.

²¹ Manual for the European Defence Law Against Discrimination July 2010. The European Union Agency for Fundamental Rights, 2010. Council of Europe.

²² Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union. Publication of: Ministry of European Integration. Tirana 2010.page 338.

or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' Constitutions."²³

4. The future implementation of the Charter and the ECHR

One of the main challenges for the EU system is its accession to the European Human Rights Convention. The legal basis is clearly established in Article 6(2) of the Treaty on the EU, yet the draft agreement on the accession, negotiated between 2010 and 2014 by the European States and the EU Commission was rejected by the EU Court in December 2014²⁴.

The accession raises some sensitive political and legal issues with regard to the relation between the two legal orders: the EU system, put under the exclusive supervision of the EU Court of Justice, and the regional system of the Council of Europe, supervised by the European Court of Human Rights in dialogue with the national courts. The accession of the Union to the ECHR would undoubtedly strengthen the legal human rights protection system in Europe.

There is still a significant gap in it, in as much as individuals only can suit State before the European Court of Human Rights, while the EU cannot be a defendant or a co-defendant, even when it has allegedly infringed rights explicitly protected by the Treaties and the EU Charter. It has been reckoned that the EU Court of Justice provides individuals with a protection 'equivalent' to that granted by the European Human Rights Court. And yet, the ultimate supervision over any kind of sovereign act impacting on the rights of the human beings ought to be attributed to a body having human rights as its exclusive legal horizon, as it is for Strasbourg Court, unlike any other State or EU judicial bodies.

5. Conclusion.

Further, the EU has adopted many Directives on different issues: temporary protection of asylum seekers, minimum standards of reception, family reunification, asylum procedures. Directives have been enacted in order to encourage States to take action and legislate in a reasonably harmonized framework. A particularly important and controversial act of the EU is the so-called Dublin Regulation, a EU law re-stating a previous convention and reformed several times, setting forth two basic principles: - all EU Member States shall examine any asylum claim lodged by a third country national or a stateless person; - an asylum claim can be examined only by a single EU Member State; the State responsible for this is (with the exception of some particular cases) that through which the asylum seeker first entered the EU. This provision is intended to prevent multiple asylum applications in different States and deter asylum seekers from travelling through the EU and choosing where to make their claim and eventually get settled.

The legal status of the Charter implies that all proposals for a new legislation as well as the legislative process itself and the implementation of the EU laws must respect human rights. In

²³ Declaration from the Czech Republic for the Charter of Fundamental Rights of the European Union. Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union. Publication of: Ministry of European Integration. Tirana 2010, page 338.

²⁴ European Union Court of Justice, Advisory Opinion 2/13, December 18, 2014

order to achieve this goal the Commission developed, among other things, an ‘Operation Guidance’ with a fundamental rights check-list in order to help European institutions and organs to effectively take account of fundamental rights when adopting new legislation.

The Charter of Fundamental Rights has played an important role in the adoption of measures concerning border control (to implement the prohibition of inhuman and degrading treatment) or in the field of financial and technical tools to fight the exclusion of Roma people, the biggest minority in Europe (the establishment and programme of work of the Roma Task Force within the European Commission, for instance). Its impact on the case law of the European Court of Justice - the supreme court of the Union - cannot be underestimated.

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