

SCOPE AND APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

INTRODUCTION

"The peoples of Europe, in establishing an ever closer union among themselves, have decided to share a peaceful future based on common values" is the founding principle of the Charter of Fundamental Rights of the European Union.

Indeed, in 1999, the European Council considered that the fundamental rights of European citizens should be reinforced by a reference text.

These rights are based on the EU's fundamental principles of contributing to peace and security, sustainable development of the planet, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights.

Fundamental rights considered as essential freedoms are the set of primordial subjective rights of the individual, guaranteed in a state of law and a democracy. It is an abstract concept, but it allows to govern all the legal relationships of natural persons, legal entities and public entities.

Thus, the Charter of Fundamental Rights of the European Union was proclaimed at the European Council of Nice on December 7, 2000 by the European Parliament, the Council and the Commission. However, its legal value only comes into force on December 1, 2009 with the Treaty of Lisbon.

Thus, having acquired the same legal value as the treaties, the charter is binding on the member states.

The authors of this text want it to meet 2 objectives:

1) that it be a reference text that appears obvious, is imposed with force and is understood by all European citizens of different cultures and sensibilities.

To do this, it is necessary to gather the existing rights scattered in various texts (European Convention for the Protection of Human Rights of 1950, European Social Charter of 1962, European Convention for the Prevention of Torture 1987, Framework Convention for the Protection of National Minorities 1954) and to enrich them with new rights that appear with the evolution of the world: environment, ethics, technology.

2) It is also necessary that the solemnly proclaimed fundamental rights have a reinforced legal protection and take into account the jurisprudence of the high court, the Court of Justice of the European Communities, which became the Court of Justice of the European Union (CJEU) with the Lisbon Treaty.

The examination of the provisions of this act makes it possible to determine, on the one hand, the extent of the fields concerned and, on the other hand, the reinforcement of the ways and means attributed, in this respect, to the nationals of the European Union.

I THE SCOPE OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

The Charter recalls in its preamble the importance of fundamental rights which give an emancipating dimension to a guaranteed state of law.

It will thus transpose a series of personal, civil, political, economic and social rights of European citizens.

In its formal aspect, in addition to the preamble, the charter enumerates in 7 titles subdivided into 54 articles the values to be defended.

Thus, Dignity, Liberty, Equality, Solidarity, Citizenship and Justice are stated successively, ending with General Provisions.

The rights proclaimed are most often expressed in general terms, the content of which is a matter for judicial assessment.

This charter guarantees a series of personal, civil, political, economic and social rights. In addition to the rights that could be described as classic, there are new rights that could be described as contemporary. In this respect, we can mention in particular the articles relating to the environment, bioethics and social protection.

It reaffirms, while respecting the competences and tasks of the EU and the principle of subsidiarity, the rights that result in particular from the constitutional traditions and international obligations common to the countries of the EU, from the European Convention for the Protection of Human Rights and Fundamental Freedoms, from the social charters adopted by the EU and the Council of Europe, as well as from the jurisprudence of the Court of Justice of the European Union and of the European Court of Human Rights.

The catalog of rights does not create new competences for the European institutions. It applies first to the institutions, bodies and agencies of the EU, then to the Member States when they are implementing Union law (cf. art. 51 of the Charter) and finally to all citizens who can invoke it in the event of failure to respect these rights.

The visible, readable and accessible character will ensure its application and respect more easily. The direct style, the simple and short sentences are the perfect illustration. It is true that the Charter has a general scope but it does not extend its field of application beyond the competences of the Union.

For this reason, when reading this Charter, the European citizen will have the real feeling of finally belonging to a community, the European community. His or her fundamental rights are thus grouped together in a single text and not in scattered standards.

By giving greater visibility and clarity to fundamental rights, this text provides legal certainty within the EU, although its legal scope is strictly regulated.

This is also a reason invoked by Poland and the Czech Republic, which negotiated a derogation from its application at the time of the adoption of the text, as did the United Kingdom when it was a member of the EU.

II APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

European Union law, also known as European law, Community law, comprises the rules on which the EU is based.

As mentioned in the introduction, its objective is to govern all legal relationships of natural persons, legal entities and public entities

This includes all the material and procedural rules applicable within the European Union, i.e. treaties, directives, regulations and case law.

In addition to the functioning of the European Union and its various bodies or institutions, many areas are partly governed by European law: trade, environment, consumption...

This European law is part of the legal system of each Member State, and therefore every European citizen is necessarily affected by its effects.

However, the Member States, which have agreed to delegate part of their sovereignty by joining the European Union, retain a margin of manoeuvre that varies according to the States and the policies concerned.

The European Union is based on several major principles, some recognized by the treaties, others by the case law of the Court of Justice. In particular, the Court of Justice ensures that European legislation is interpreted and applied in the same way in all EU countries, thus guaranteeing that member states and EU institutions respect it.

The functioning of the European Union is based on 3 main principles:

a) The principle of attribution according to which the EU acts only within the limits of the competences that the Member States have attributed to it. Any competence not attributed to the Union in the treaties belongs to the Member States.

b) The principle of subsidiarity, already mentioned, according to which, in areas that do not fall within its exclusive competence, the Union intervenes if and only if, and insofar as, the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can, by reason of the scale or effects of the proposed action, be better achieved at EU level.

c) And the principle of proportionality that, in view of the objectives pursued, the content and form of the EU actions do not exceed what is necessary to achieve the goal.

Moreover, the possibility for EU nationals to rely on the treaties to assert their rights before national courts was recognized as early as 1963 by the Court of Justice of the European Community (Van Gend en Loos ruling).

The same applies to the primacy of Community law over national legislation (Costa v. Enel ruling of 1964), according to which in the event of conflict between national and European standards, the latter apply.

The Charter of Fundamental Rights has the same legal value as the EU treaties that have been ratified.

At the national level, European law is applied immediately or after transposition of the European text into national law. This law has a higher value than national law.

In the defence of rights, the Charter can be invoked before the Court of Justice, in the event of a breach by a Member State, by the European Commission or by a Member State other than that of the complainant.

a) the application of the rights defined in the charter

These are the fundamental rights and freedoms attached to the person: the right to life, to security, to integrity and to those that make life worth living, such as the rights to food, to education, to work, to health and to freedom.

The European citizenship confers rights (and duties but these are not explicitly mentioned in any treaty, only a very general mention is written in the preamble of the Charter), which are added to those attributed by the national citizenship. The creation of a European citizenship becomes an instrument of reinforcement of the rights of the nationals of the Member States. From now on, the European citizens have rights inherent to their quality of European citizen. They are guaranteed by the treaties of Maastricht, Amsterdam and Lisbon for example.

Like national citizens, European citizens have the right to move and reside, to work and study in the territory of other member countries, recognized to active and inactive

(students, pensioners ...) civic and political rights: right to vote and to stand for election in municipal elections and elections to the European Parliament in the Member State where they reside, right to petition to the European Parliament

b) the defence of the rights of EU citizens

The European citizenship confers rights that can be protected in front of the European institutions by jurisdictional means: the courts or by non-jurisdictional means: the European Union Ombudsman.

1 / jurisdictional means of defending citizens' rights in the EU

It is a set of 2 jurisdictions: the Court of Justice and the General Court, together called the Court of Justice of the European Union CJEU

The Court of First Instance deals with all appeals by individuals against acts of the European institutions:

- against legal acts which affect them directly and individually
- action for failure to act, against the inaction of the European institutions in a given field;
- claims for compensation when individuals have suffered damage caused by EU institutions or agents.

Individuals may appeal to the Court of Justice against decisions of the Court of First Instance, actions for annulment or references for preliminary rulings from a national court.

2 / non-judicial means of defending the rights of EU citizens

The European Ombudsman is the main non-judicial means available to citizens. He receives complaints from citizens against acts of maladministration by the European institutions. In case of illegality, he refers the matter to the institution in question and sends it a draft recommendation, which is not binding.

He is independent and elected by the European Parliament.

The right of petition is also granted to any European citizen and any person residing in the European Union, individually or collectively. The petition allows to address the European Parliament to formulate grievances or to request that measures be taken.

Thus, it is clear that at the normative level, the tools are well in place to ensure the respect and guarantee of the fundamental rights set out in the Charter.

In practice, this respect and this guarantee are effective, since the case law on this issue is abundant. The European judicial order is naturally targeted, but not only.

Indeed, the national courts of the member states have also had to take account of the provisions of the Charter when dealing with European Union law.

The judicial impact of the Charter is significant and the drafters of the text can only be pleased with it since it shows the influence of the text in the treatment of conflicts.

CONCLUSION

The Charter of Fundamental Rights of the European Union highlights contemporary universal values attached to the human person in order to promote an ideal in a common space marked by freedom, security, equity and solidarity.

The expression of the rights of European citizens is clearly affirmed and the means, notably jurisdictional, are confirmed to ensure that they are respected.

This Charter reinforces the primacy of Community law over the national law of the States, in order to strengthen European citizenship and the cohesion of the members.

The scope of application of the Charter has become clearer over time and especially through the case law of the Court of Justice, which has endeavoured to set limits in each area.

The national courts will then only have to follow the path thus mapped out as long as the national standards do not upset or contradict the fundamental rights laid down by the Charter.

In order to remain in line with political, economic, environmental and sociological developments, adaptations or amendments may be necessary at the same pace as societal changes.