

COM-Inst.Aff./008

Brussels, 28 February 2000

OPINION

of the Committee of the Regions

of 16 February 2000

on the

"Process of drawing up a Charter of Fundamental Rights of the European Union"

The Committee of the Regions,

HAVING REGARD TO the decision of the Bureau of 15 September 1999 to draw up, in accordance with the fifth paragraph of Article 265 of the Treaty establishing the European Community, an opinion on the subject, and to instruct the Commission for Institutional Affairs to prepare the Committee's work on the subject;

HAVING REGARD TO the draft opinion adopted by the Commission for Institutional Affairs on 27 October 1999 (rapporteurs: **Mr Bore** (UK, PSE) and **Mrs du Granrut** (F, PPE));

WHEREAS the European Council feels there is a need, at the present stage in the development of the Union, to establish a Charter of Fundamental Rights of the European Union (Annex IV of the Presidency Conclusions of the Cologne European Council on 3 and 4 June 1999) ;

WHEREAS the Convention to draft a Charter of Fundamental Rights of the European Union was set up on 17 December 1999,

adopted the following opinion at its 32nd plenary session of 16 and 17 February 2000 (meeting of 16 February 2000):

1. General comments

1. The Committee of the Regions has always stressed the need to strengthen citizenship and participatory democracy in the European Union, and the importance of formulating the rights of European citizens to attain this objective; it takes the view that, as the

representative of regional and local authorities - the bodies which are closest to the citizens - and as the guarantor of the subsidiarity principle, it should make its contribution to drawing up the Charter of Fundamental Rights of the citizens of the European Union.

2. Basic rights constitute the bedrock of a society based on the principles of liberty, democracy, respect for human rights and fundamental liberties and the rule of law, as enshrined in the constitutional traditions which are common to the Member States.

The European Union's capacity to help build a society which corresponds to these aspirations largely depends on citizens claiming these rights - i.e. accepting them and above all exercising them.

3. The Committee of the Regions recognises the fast-changing character of the European Union and the growing challenges which it faces at the beginning of the 21st century.

The last four decades have seen the gradual development of the European Union. Developing in several phases, an increasing number of European countries have pooled their resources and achieved together a very significant degree of economic growth, social stability and political harmony, without managing to generate the sense of commonality among the citizens of Europe needed to realise the full potential of a social and political Europe which guarantees fundamental rights.

The last fifteen years have seen an enormous acceleration of economic integration with the development of the single European market and a common European economic area. It is due to be further accelerated by the creation in 1999 and putting into circulation in 2002 of the single currency, the Euro.

4. A number of steps have been taken towards greater social cohesion and increased political cooperation. These have found expression in the establishment and development of new European institutions such as a directly elected Parliament and the Committee of the Regions and in the introduction of European-wide social and civil guarantees.

At the Council of Europe's initiative, a European Convention on Human Rights was drawn up, allowing for cases to be brought, and there is a European Social Charter which can be used for reference, but without the right to resort to legal action in the event of non-compliance.

It had been envisaged that the European Union as such would be a signatory of the European Convention on Human Rights. This is now excluded by Opinion 2/94 of the European Court of Justice, dated 28 March 1996, which states that this would involve the Community in a distinct international institutional system, that it would introduce all the provisions of the European Convention on Human Rights into the Community legal system, and finally that at the present stage of Community law the European Union does not have the powers to accede to the Convention.

5. Up to now, fundamental rights with respect to acts of sovereignty of the Community institutions have been safeguarded in the first place by the European Court of Justice. At an early stage, the Court of Justice established the binding force of fundamental

rights as unwritten principles of law at EU level too. The Treaty bases for safeguarding fundamental rights in the EU were expanded and strengthened by the Maastricht and Amsterdam Treaties. The Treaty of Amsterdam, signed on 2 October 1997 and inaugurated on 1 May 1999, represents an important stage in the consolidation of the fundamental rights (cf. Article 6(2) of the consolidated Treaties). However, these wider issues have lagged behind the developments in the economic area.

Moreover, while the Treaty reaffirms the commitment of the Union to fundamental rights, it includes gaps and inconsistencies with regard to the guarantee of these rights or of those linked to the objectives set out.

Acknowledging the existence of these gaps and inconsistencies provides an opportunity to correct them and arrive at a clear, unequivocal text on the basic rights of European citizens and the ways to guarantee them.

6. The 1990s have seen signs of greater citizen uncertainty about these developments towards European integration. These have been reflected most recently in the very low turnout for the elections to the European Parliament in June 1999.

A quickening in the pace of economic and financial integration, combined with a lessening of confidence by citizens in European institutions, represents a dangerous scenario for the future of the European Union. It requires swift action to bring the social, political and cultural needs of citizens into correspondence with the changing economic realities. This makes the call for a Charter of Fundamental Rights for European citizens all the more important and urgent. However, to address the issue of a lack of public confidence, this Charter needs to be a simple, straightforward, easily understood document, free from the bureaucratic and legalistic jargon that often mars formal constitutional documents.

At a time when the Treaties of Maastricht and Amsterdam have granted new powers to the European Community, giving rise to wider responsibilities in terms of fundamental rights for the Community, and when the Community has chosen not to subscribe to the European Convention on Human Rights, it seems urgent for the Community to take up a clear position on the basic rights which it wishes to see guaranteed to citizens of the Union, following from the scope of its action.

The Committee of the Regions is of the view that the incorporation of these rights into European Union Treaties would give a clear indication of Member States' commitment to building a Union based on the values of liberty, equality and solidarity.

The Committee points out that historically declarations of citizens' rights are preambles to Constitutions and have their *raison d'être* in them, as the basis of the powers needed for the exercise of those rights.

The Committee stresses the constitutional value of the Charter because it feels that the process of drawing up a charter of rights cannot and must not be separated from the institutional reform to be undertaken by the next Intergovernmental Conference

2. The content of the Charter

The Charter of Fundamental Rights for citizens of the European Union must cover three fields: individual rights, economic, social and cultural rights, and civil and political rights.

The first field should cover the basic rights covered by the Universal Declaration of Human Rights, and more specifically by the European Convention on Human Rights.

1. Rights linked to the person

- Right to life, right not to be subjected to torture or inhuman or degrading punishment or treatment.
- Right not to be subjected to slavery, servitude or forced labour, right to freedom of movement.
- Right to freedom of thought, conscience and religion, freedom of expression and information.
- Right to a proper civil or penal trial.
- Right to privacy regarding private life, personal data, correspondence and home life.
- Right to housing, right to property and to respect for property.
- Right to health protection.

2. Economic, social and cultural rights

- Right to work, to freely negotiated working conditions, to a fair wage, to a reasonable length of notice of termination of employment, to appropriate vocational guidance, training and re-training.
- Right to freedom of movement and establishment for workers and to equality of treatment with workers of the country concerned.
- Right to equality of opportunity and treatment, without discrimination based on race, sex, colour, ethnic, national or social origin, culture, language, religion, political beliefs, family situation, sexual orientation, age or disability.
- Right to set up trade union organisations and right to collective bargaining, information, consultation, and participation for decisions affecting workers' interests.
- Right to social security, social and medical assistance, and the benefit of social services.
- Right to education, right to freedom to choose an occupation and right to continuing vocational training.
- Rights linked to economic and entrepreneurial activity: right to property, right of competition, right to conclude contracts, etc.

3. Civil and political rights

- Right to vote in local and European Parliament elections for non-nationals from other EU countries in the Member State where they are resident.
- Right to set up European political parties, right of petition, association and demonstration.
- Right to local democratically constituted decision-making bodies.
- Right to check on legality of administrative action.
- Right of minorities to protection for their religion, language and culture.
- Right to equal opportunities of women and men in all decision-making fields.

4. Clearly, these rights cover a very broad canvas. The crucial task is to make them meaningful and practical, so that they give people a clear sense of the rights they enjoy

across the European Union as a whole.

It is not enough to define rights. The principle of their justifiability must be established and appropriate access to national courts and the European Court of Justice defined or clarified, to ensure that rights can be exercised in practice.

5. As well as detailing these rights, the Charter should contain, as appropriate, complementary clauses expanding on particular aspects. This opinion from the Committee of the Regions wishes to highlight a number of areas where this is felt to be necessary.
 1. In an increasingly multi-cultural, multi-racial, multi-ethnic European Union equal opportunities is a "horizontal theme" which cuts across a number of these rights. Thus, the Bill of Rights should guarantee the right to equality of opportunity and treatment without any distinction of race, ethnic, national or social origin, language, religion, gender, marital status, sexual orientation, age or disability.
 2. In the light of the conclusions of the Tampere European Council on 15 and 16 October 1999 and its resolutions on the integration of third country nationals, the Committee of the Regions believes that the body responsible for drawing up the Charter of Fundamental Rights should examine the issue of whether long-term residents should be granted a set of rights that resemble as closely as possible those of EU citizens.
 3. The right to a fair, public hearing needs to be reinforced by the creation of common legal standards and a common sense of justice throughout the European Union. Given the huge and growing degree of travel within the European Union for work, leisure and tourism, a set of common standards to ensure a common level of justice and fairness should be applicable across all EU Member States. We give two examples: a guarantee that effective legal advice and where necessary, language interpretation services are available for EU citizens arrested outside their home Member State; the establishment of a common system of European bail so that people are not arrested and held on remand in cells in another country for lengthy periods.
 4. Finally, with regard to the rights of private individuals, the new charter of rights needs to recognise the contemporary reality of patterns of divorce, separation and remarriage within modern European society. The new charter should make clear the rights of mothers and fathers to have fair and equitable access to their children in the event of divorce and/or separation; and indeed the rights of children to be able to see both of their parents if they so wish on a regular basis.

2.5.5 The Charter of Fundamental Rights must also address questions related to new areas such as the knowledge society, environmental changes or biotechnology.

6. Beside these four specific areas where the introduction of the Charter of Fundamental Rights into European law will give clear civil and social rights to residents of the Union and help to match the growing common European economic space with a complementary social, civic and political space, the Committee of the Regions wishes

to stress three issues related to European citizenship.

1. The Charter will enable each national of an EU Member State to identify his specific European citizenship as involving new rights and expressing membership of the new entity known as the European Union.

European citizenship is a major challenge for the European Union; it is not an alternative to national citizenship; it is at once complementary, unique and resolutely political.

For the Committee of the Regions the Charter of Fundamental Rights is the foundation of European citizenship.

2. The Committee of the Regions takes the view that the fundamental rights have a constitutional value, enabling individuals who enjoy them to appeal to the relevant courts, where appropriate national courts, the Council of Europe's Court of Human Rights and the Court of Justice of the European Communities, every time such a right is threatened.

The Committee of the Regions considers that fundamental rights need to be effectively guaranteed within the European Union, within a framework that ensure that citizens will have recourse to appropriate legal remedies.

2.6.3 The Charter of Fundamental Rights should therefore reiterate **in some form** the principles of local self-government as set out in Article 3 of the Council of Europe's Charter of Local Self-Government.

2.6.4 The fundamental rights therefore have an essential political dimension, because they link the democratic basis of political society with its limitation by the recognition of citizens' rights.

The Committee of the Regions is convinced that this right of participation in public life, exercised first and foremost by electing local authorities, is the first and indispensable link in a chain of political responsibilities in which the citizen must participate and feel involved.

Once the citizen feels a part of the chain of power emanating from him and extending to the summit of the European Union, he will accept the constraints of the "res-publica" and the decisions of those whom he has entrusted with it.

The fundamental rights thus lay the basis for participatory democracy, which respects the citizen's power and that of the various levels of authority to which he delegates his power.

2.6.5 As regards social and economic rights, the principle of subsidiarity needs also to be taken into account, given the different social, economic and legal structures within the Member States.

3. The future process

1. European Union leaders have agreed to the proposal for the drawing up of a Charter Fundamental Rights. The preparation of the Charter is the responsibility of a working group made up of representatives of the governments of the Member States, a person appointed by the Commission President, MEPs and national parliamentarians. The Committee of the Regions is to be consulted in this procedure and has been invited to

speak to the Convention , but it believes that it should be more fully involved and be given observer status.

In compliance with the subsidiarity principle, the Convention advocated by the European Council for drawing up the charter should be wide enough to allow every level concerned, that is Europe, the Member States and local and regional authorities, to obtain a hearing for their views on the content of the European Charter of Fundamental Rights and in particular enable the public to express views and have access to information prior to decisions being taken by Europe and the Member States.

2. The proposal to develop a Charter of Fundamental Rights is an important step forward by the European Union. The COR intends to participate fully in this process and to take forward the ideas contained within this opinion into that wider forum. The COR representatives will highlight the main themes in this opinion during the forum's deliberations. The COR does not rule out drawing up a further position which could supplement and clarify the opinion in the light of the work of the Convention responsible for drawing up the draft Charter of Fundamental Rights to be submitted to the European Council in Nice in December 2000. At the same time they will stress the importance for the final document not only to be incorporated within the EU Treaties, but also to be produced as a stand-alone document highlighting the key elements that form Europe's bill of political, social and civil rights.

4. Conclusion

1. The European Union is very much at a watershed in its development. It is vitally important that urgent steps are taken to involve the public in decision-making so as to boost public confidence in both European institutions and the European Union as a whole. Making clear, in very practical and straightforward terms, the key economic, social, cultural, civil and political rights which the Union guarantees to all of its members is the urgent task. The development of a Charter which gives expression to a citizens' and people's Europe, which will complement the common economic space which is currently being developed, is the way forward. This should be the clear goal and objective of the Charter of Fundamental Rights. That is the task which the Committee of the Regions and its representatives will argue for in the months ahead.
2. The Committee of the Regions comes out firmly in favour of a Charter of Fundamental Rights of the citizens of the European Union, which will give the Union homogeneous, coherent Community law with constitutional value within which these rights may be effectively exercised.
3. Thus the European Union, governed by law and based on adherence to common values which are legally guaranteed, will be enshrined in that form in the next Treaty on European Union.

Brussels, 16 February 2000

The President

of the

The Acting Secretary-General

of the

Committee of the Regions

Committee of the Regions

Jozef Chabert

Vincenzo Falcone

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