

HUMAN RIGHTS WITHIN THE EU PRIOR TO THE EXISTENCE OF THE CHARTER

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ABSTRACT: *In addition to the adoption of U.D.H.R and E.C.H.R, the founding Treaties of the European Communities did not undertake any commitment to the protection of human rights at Community level. An explanation for this is the one that relies on the purpose of creating the EU, which was the creation of a common market, putting emphasis on the economic and functional aspects. The treaty establishing the European Economic Community (Treaty of Rome-1957) contained only a few fundamental rights, the foremost of which was the prohibition of discrimination on the grounds of nationality. However, it is understandable that, despite the lack of projections therein, treaties were not intended to violate of human rights. The 1986 Single Act made a direct reference to the notion of the protection of human rights for the first time. Maastricht's treaty (1992) undertook a more concrete step, stating in its Preamble the observance of human rights in more specific way.*

KEYWORDS: Human Rights, EU, Charter

Historical Background

The Amsterdam Treaty of 1997 (Article 6 of the Treaty on European Union) had some progress, as it was foreseen that the Union relied on the principles of freedom, democracy, respect for human rights, rule of law, made a reference in the ECHR underlining its respect as a general principle of the community. This point is considered very important since for the first time E.C.H.R appeared as a human rights instrument that found its place in the EU's primary legislation. However in practice this was not enough for the human rights problem in the EU, as this article did not foresee that the EU would be legally obliged to implement the ECHR, so there was still a gap in the human rights issue in EU.

For a catalog of human rights within the EU, efforts are more timely. It was the Cologne Council (3-4 June 1999) who started the process of elaborating the Charter. At Tampere's Council (June 15-16, 1999), an agreement was reached on those to whom the draft Convention would be entrusted. The whole product of this work was presented to the Council of Nice (2000) as the European Union Human Rights Charter. This Charter was later embedded as part of the EU Constitutional Treaty and is currently an annex to the Lisbon Treaty.

The role of E.C.H.R

Despite the lack of specific human rights clause in the founding treaties of the EU, E.C.H.R has gradually developed a mechanism within the EU for the protection of human rights through issues reviewed by it. Of course this was not achieved immediately, as it is noted that in its early trials E.C.H.R has been difficult to refer to human rights, saying that this part is not in its competence.

E.C.H.R has developed the principle of supremacy in order to consolidate the uniformity of community legislation within the laws of member states. Through these judgments it became clear that the national courts of the Member States could not decide in violation of Community

law. On the other hand, the ECHR could not even enforce domestic laws of member states, including their constitutional provisions on human rights in the matters under consideration. It follows that no clear human rights protection was given to the oversight of Community law by ECHR. Only a few years later, the ECHR's approach began to change.

In addition to ECHR decisions regarding the supremacy of Community law, it has positively expressed in several cases the supremacy of member states' constitutional laws on the human rights issue. For the first time, it referred to international treaties on the protection of human rights the treaties in which these States are part. In the 'Rutili' case, the ECHR explicitly ruled that the provisions of the Convention should be applied.

In some cases, the ECHR has also referred to other international instruments. In the case of 'Defrenne against Sabena III', the ECJ referred to ILO Convention No. 111 (25 June 1958) and to the European Social Charter (18 November 1961) discrimination on grounds of sex, where it was stated that its elimination is a fundamental right.

The ECHR has played a major role in filling the gap in human rights in the EU with its interpretations referring to universal human rights documents. The ECHR has stated that the Charter has a very special value, but never it has not been said that the EU is formally obliged to implement the Charter. This means that in the face of a complaint before E.C.H.R individuals can not be sure whether E.C.H.R will decide according to the Card, as it would do in the same case E.C.H.R. To guarantee what is called 'legal certainty', EU bodies have been trying to adopt the Charter of Fundamental Rights of the EU.

Impact of Constitutional Courts - Their Stance on the Missing Human Rights Protection Instruments within the EU.

The most influential in this respect were the Constitutional Courts of the Federal Republic of Germany and Italy.

In Solange I (1974), the German constitutional court refused to recognize the unlimited supremacy of Community law based on Article 24 of the Constitution of that State. By this decision, the Court stated that it would not accept the supremacy of Community law because the German constitution offered specific and extensive protection of human rights.

The next decision, Solange II, was the next step that warned the EC to take the necessary steps to protect human rights. In this decision, the constitutional court said it would no longer review the secondary legislation of the EC from the standpoint of standards of fundamental rights under the German Constitution. The Court will do so only when communities have secured effective protection of these rights to balance the sovereign powers of communities, which is considered to be substantially similar to the protection of human rights that required by the Constitution.

The Italian Constitutional Court also gave its message to the EC in the judgment of the case 'Frontini vs. the Minister of Finance'. The Court acknowledged the effectiveness of Community law within their scope of application and also confirmed that it would review the exercise of powers by ECC bodies for ensuring that there would be no violation of human rights or the fundamental principles of the Italian constitution.

These examples show that these courts have called upon Union institutions to fulfill the protection of human rights by avoiding their lack of protection in the treaties. According to these two courts, the Union was a step backwards than the constitutional provisions of these states regarding the protection of human rights.

CONCLUSIONS

The Charter was promulgated by the European Council, the Commission and the European Parliament in Nice on 7 December 2000 and was a product of the mandate given to the Cologne Council in 1999. The Charter itself was necessary to point out human rights which existed in the EU, but were not as 'visible' enough as long as they lacked a catalog of them. Equally important is the issue of legal certainty. In the absence of this catalog, individuals were in a situation where they did not know what instances they were addressing. On the other hand, the ECHR is an extremely important document for Europe which can in no case be overlooked by the authorities. It also served as a basis for drafting the Charter itself. This leads to the dilemma if the Charter is to be a substitute for the ECHR or not. Since the answer is 'NO' then the EU will be monitored by an 'external body' related to the system of human rights protection by its institutions. The very purpose of the EU itself is not to create a dual system of human rights protection in Europe.