

## **Charter of fundamental rights of the European Union- legal decisional document in justice and administration**

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### **Abstract**

*The international community is today more than ever concerned with the promotion of human rights as widely as possible, with creating a legal framework as diversified for international cooperation in this field, with creating a system as complex to promote and protect, on different legal ways, the human rights in various fields and ensuring the fullest possible transposition of these into practice, including penalizing infringements to the existing legal norms.*

**Keywords:** *charter, fundamental rights, European Union.*

### **Introduction**

On 7 December 2000, at Nice, was signed the text of the Charter of Fundamental Rights of the European Union (hereinafter "EU Charter"), within a solemn meeting, by the European Parliament President, the acting President of the EU Council and the European Commission President [1], but since the text of the Charter has not been included in the Treaty, it had no legal force [2], and its legal nature was of an inter-institutional agreement (between the European Parliament, European Commission and EU Council), these institutions undertaking to respect the rights contained in this document [3].

The EU Charter was solemnly re-proclaimed by the European Parliament, the EU Council and the European Commission on 12 December 2007. It represents a modern document which does not impose any transfer of competences, establishing the instruments with which can be controlled the way in which the Union or the Member States shall exercise their competences in the human rights matter in the EU law [4]. Signing this document represented an important moment on the road of European integration, reaffirming the signatories believe that the respect of human rights, of

fundamental values, constitute the fundamental rule on which the collaboration of European countries is founded [5].

The EU Charter represents a modern document, both through its formal presentation, as well as through the fact that, “renouncing to the distinction between civil and political rights and the economic and social rights, it regroups the rights proclaimed around six fundamental values: dignity, freedom, equality, solidarity, citizenship, justice” [6].

The protection of these values “is realized within the shared competence, namely a competence that EU bodies share with the Member States, the European Union being an area of freedom, security and justice, characterized by the respect of fundamental human rights and different legal systems and traditions of the Member States” [7].

### **The importance of the Charter of Fundamental Rights of the European Union in the substantiating of the decisional act**

Analyzing the EU Charter provisions, we consider necessary to reveal some aspects regarding the importance of the analyzed document for the justice and administration bodies.

First, it should be pointed out the solemn character of this document, the fundamental ideas inserted into the Preamble of the EU Charter [8]. Apart from the references to preserve and develop the common values and diversity of cultures, as well as the traditions of the peoples of Europe, it is worth noting that the Preamble includes a reference about the reaffirmation, with the compliance of the competences and tasks of the Union, as well as with the principle of subsidiarity, of the “the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case- law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention” [9].

Therefore, with the intention of the initiators, the EU Charter was meant to be a synthesis of both the commitments assumed by states through conventional instruments, as well as the European practice in the field of human rights, selecting essential and maximum generalization ideas imposed by mandatory force not only to the states, but also to Union's institutions [10].

Secondly, the EU Charter summarizes in a single document, for the first time in European history, all the categories of rights, namely civil, political, economic and social, systematized in a new way. Thus, the EU Charter guarantees the following rights and freedoms:

1. in Title I, entitled "Dignity": human dignity, right to life, right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labor;

2. in Title II, entitled "Freedoms": right to liberty and security of person, the right to respect for private and family life, protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and of association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business, right to property, right to asylum, protection in the event of removal, expulsion or extradition;

3. in Title III, entitled "Equality": equality before the law, prohibition of discrimination, equality between women and men;

4. in Title IV, entitled "Solidarity": fair and just working conditions, prohibition of child labor and protection of young people at work, family and professional life, social security and social assistance;

5. in Title V, entitled "Citizens' rights": the right to vote and to stand as a candidate at elections to the European Parliament, the right to vote and to stand as a candidate at municipal elections, the right to good administration, the right of access to documents, the right to petition, freedom of movement and of residence;

6. in Title VI, entitled "Justice", regulates: the right to an effective remedy and to a fair trial, presumption of innocence and right of defense, principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence. [11]

A third clarification concerns that, in terms of the scope of the legal subjects, the EU Charter makes no distinction between citizens and aliens, bringing together, for the first time, in a single document, the rights of all persons who are lawfully in the Union territory. For this reason, most of the texts that define the fundamental rights begin with the phrase "any person", which demonstrates the particularly broad level of protection of legal subjects. However, there are some differentiations. For example, Article 15, entitled "Freedom to choose an occupation and right to work", makes a distinction between the right to work and to pursue a freely chosen or accepted profession [12] and the right of every citizen of the Union to seek employment, to work, to settle or to provide services in any Member State [13].

An important provision is the one according to which "nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union" [14].

Regarding ownership, the EU Charter also contains a very broad provision, namely: "everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest" [15].

The right to asylum is guaranteed [16], but only with due respect for the rules of the Geneva Convention [17] of 28 July 1951 and the Protocol [18], which restricts awarding this right only to politically persecuted persons, not being accepted the formulation included in other international instruments such as the OAU Convention or the Charter of Cartagena, which have extended the right of asylum to persons who, for economic or social unrest reasons, were forced to leave their countries of origin [19].

Another clarification that we consider necessary refers to the inclusion in the EU Charter of numerous developments regarding the formulations in relation to the fundamental documents that were the basis of its development [20]. For example, the provision according to which "no one shall be condemned to the death penalty, or executed" [21].

The provision on the right to the integrity of the person [22], establishes a set of rules to be followed in matters of medicine and biology. Thus, have to be respected in particular: “a) the free and informed consent of the person concerned, according to the procedures laid down by law; b) the prohibition of eugenic practices, in particular those aiming at the selection of persons; c) the prohibition on making the human body and its parts as such a source of financial gain; d) the prohibition of the reproductive cloning of human beings” [23].

The provision concerning non-discrimination [24] mentions, besides the well-known criteria of non-discrimination that are prohibited (for example, sex, race, color, ethnic or social origin, genetic features, language or religion), others such as [25]: beliefs, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

The right regarding the equality between women and men provides that, “the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex” [26].

As for the Rights of the Child it is stipulated that “every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests” [27].

Likewise, we can notice the entire set of requirements included in Title IV, entitled “Solidarity”, which creates important guarantees of the right to work. Also, extremely important is the provision according to which, “every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States” [28].

The EU Charter contains important elements of supra-nationality, in particular to the right of European citizenship and its consequences [29]. Thus, it is recognized the right to vote of any citizen of the Union, the right to vote and to stand as a candidate at elections to the European Parliament [30], or at municipal elections [31], in any Member State of the Union, “under the same conditions as nationals of that State”.

All Union citizens have the right to refer to the European Ombudsman “the cases of maladministration in the activities of the institutions, bodies, offices or agencies of the

Union, with the exception of the Court of Justice of the European Union acting in its judicial role” [32], the right to move and reside freely within the territory of the Member States [33], to have access to documents whatever their medium [34].

It is observed that, certain rights included in Title V, entitled "Citizens' rights" refer not only to EU citizens, but also to any natural or legal person that is resident or has its registered office in a member state. Thus, people who do not have EU citizenship can address to the European Ombudsman (art. 43) or to exercise their right to petition [35]. The EU Charter expressly provides that its provisions are addressed to the institutions and bodies of the Union, respecting the principle of subsidiarity, and to the Member States only when “implementing the Union law” [36]. The same provisions, require that “they shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties”.

Not wanting to give the impression that this document would produce an expansion of the powers of the union, the EU Charter provides that it “does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties” [37].

The EU Charter contains a general clause limiting the rights [38], which provides that the restrictions on the rights must aim Union's general interest or the protection of the rights and freedoms of others should be proportionate and respect the essence of the right [39]. This limiting clause, by its general character, seems to be less protective than the Convention, which, for each right, specifies the restrictions approved [40]. To avoid a distortion in the protection of rights domain, the Charter introduces a clause referring to the Convention and provides that if the rights under the EU Charter correspond to the rights guaranteed by the Convention, then these rights have the same meaning and the same scope as those set by the Convention and its case law .[41]

The Charter’s provisions also establish the protection of the right level, so that “none of the provisions of this Charter shall be interpreted as restricting or adversely affecting human rights and recognized fundamental freedoms, in the respective fields of application, by the Union law and international law, as well as by the international

conventions to which the Union or all the Member States are parties, and especially the European Convention on Human Rights and Fundamental Freedoms, as well as by Member States' constitutions" [42].

### **The Lisbon Treaty and the Charter of Fundamental Rights of the European Union**

The draft of the Treaty establishing a Constitution for Europe has created the legal basis for the Union's accession to the Convention, which would have allowed to contest before the Court, the acts of the Union's institutions which infringe human rights. The failure of this project has led the European states to resume efforts in order to reform the Union [43].

These efforts have resulted in the adoption in Lisbon, on 13 December 2007, of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [44] (hereinafter referred to as the "Treaty of Lisbon").

The Treaty of Lisbon has introduced significant references to human rights and fundamental freedoms in the wording of the two treaties. The Treaty on European Union has been completed, even in its Preamble, with reference to "the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law", confirming "the Member States' commitment to the principles of liberty, democracy and respect for human rights and fundamental freedoms, and the rule of law" [45].

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, as well as respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. [46]

At the same time, "The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights" [47].

An important mention is that concerning the fact that "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 adopted 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.” [48].

The important provisions are also summarized in the paragraphs newly introduced, namely: “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” [49], respectively, “the 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” [50]. The Union can adhere to the Convention [51].

Therefore, the fundamental rights, as guaranteed by the Convention and resulting from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law and the Union's adherence to the Convention represents a major contribution to the creation of a coherent system of human rights protection in Europe [52].

Through the Union's accession to the Convention is ensured the legal consistency of the two mechanisms of protection of fundamental rights, namely the Union and the Council [53]. Also, there is assured a mechanism of external control of the Union's acts that concern human rights guaranteed by the Convention, whereas, through this accession, the Court acquires “*ratione personae*” jurisdiction in the respective matter [54].

Article 6 of the Treaty of Lisbon sets out three fundamentals [55] of respecting the human rights in the Union, namely:

- a. legally binding effect similar to the treaties of the provisions of the Charter of Fundamental Rights;
- b. Union's accession to the Convention;



c. Consecration of the fact that the fundamental rights, as guaranteed by the Convention and the constitutional traditions common to the Member States, represent the general principles of the EU law [56].

### Conclusion

We conclude, therefore, that through the Charter of Fundamental Rights of the European Union have been recognized, reaffirmed and developed the fundamental legal norms on human rights and it strikes a balance between the regional regulations it contains and international legal provisions, both in terms of regulation and in terms of State competence in this matter.

Being the birthplace of human rights theory, Europe had played a pioneering role in this field and has developed its own tools to protect fundamental rights and freedoms. The European approach knows the largest development, being possible to identify some specific features of the concept.

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