

## **“Rights”, “Freedoms” and “Principles” Set Out in the Charter of Fundamental Rights of the EU**

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**Abstract:** In European Community law, the first provisions on human rights and freedoms were stipulated in the text of the European Convention on Human Rights and Fundamental Freedoms, published in Rome, in 1950. However, until 2000, when the Charter of Fundamental Rights of the EU was published, not only did the number of these human rights and freedoms increase, but also the amount of the principles laid down by the law of the European Union. A decisive role in this regard was played by the European Council, which, during its meeting in Cologne, on 3-4 June 1999, expressed the desire to write a draft Constitution for the EU, which would provide for the fundamental rights and freedoms of the EU citizens. This was materialized by the Charter of Fundamental Rights of the EU, published in Nice in 2000, and then by the Treaty establishing a Constitution for Europe, published in Lisbon in 2007. The latter embodied in its text the rights, freedoms and principles provided by the former, hence its constitutional value for the EU Member States.

**Keywords:** fundamental rights and liberties; constitutional value; the “Charter”; part of the EU Corpus of legislation

### **1. Preliminaries**

In the text of the Charter of Fundamental Rights of the European Union (Nice, 2000), integrant part of the corpus of the EU primary legislation, it was foreseen both the fundamental rights and liberties (Dură & Mititelu, 2012; Mititelu, 2012), and an amount of principles laid down by the law of the EU (Mititelu, 2013; Dură, 2013), hence its constitutional value for the EU member States.

Pending the adoption of the Lisbon Treaty in 2007 – which established a “Constitution for Europe” – the Charter of Fundamental Rights of the EU (Dură & Mititelu, 2013), proclaimed on 7 December 2000, at Nice (France), “a simple statement... of rights...”. But, by incorporating their dispositions within the Treaty on the European Union (Lisbon, 2007; Dură, 2006), the “Charter” became “legally binding” (Sy, 2016) and, as such, the provisions of the EU Charter of Fundamental Rights are applied “as constitutional rules under constitutionality review” (Mazilu-Babel, 2013).

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The Lisbon Treaty – entered into force on 1 December 2009 – provides that the EU Member States recognize the “rights, freedoms and principles set out in the Charter of Fundamental Rights of the EU, published on 7 December 2000, as adopted on 12 December 2007, in Strasbourg, which has the same legal value as the Treaties” (Article 6, paragraph 1).

Therefore, the Charter of Fundamental Rights of the EU has the same legal value as the Treaties. Having “the same legal value as the Treaties”, the Charter is, thus, part of the corpus of the EU primary legislation.

Although until 1 December 2009, the “Charter” had existed “in a purely declarative form”, however, “this did not prevent the Court of Justice to use it as a source of interpretation since its proclamation”, thus acquiring “the function of a reference element or assistance tool for interpreting Community law” (Mazilu-Babel, 2013), *recte* of the EU law.

According to the statements of certain European jurists, “the Charter of Fundamental Rights of the EU” whose development project was decided by the European Council, during its meeting in Cologne, on 3-4 June 1999 – was, in fact, meant to be a “constitutional project for the European Union” and a treaty with the force of “*jus cogens*”, with regard to the observance of “the EU constitutional values” (Maduro, 2011), and, *ipso facto*, of the rights and freedoms of its citizens.

Since the Charter of Fundamental Rights of the EU is seen as “... part of the internal national constitutionality”, its provisions are used for the purpose of “the constitutional review performed by national specialized courts...” (Mazilu-Babel, 2013).

As far as the constitutional review is concerned, it is noteworthy that it applies from the moment when the respective EU State formally adopts the Lisbon Treaty.

The texts resulting from the jurisprudence of the European Court of Human Rights (Strasbourg/ECHR) (Dură & Mititelu, 2014) revealed, on several occasions that, “since its proclamation in 2000, the Charter of Fundamental Rights of the EU has had a remarkable influence on the European Court of Human Rights” (Reflète Édition spéciale. Charte des droits fondamentaux de l’Union européenne, 2013). Moreover, “since 2002, the European Court of Human Rights explicitly relied on the text of the Charter, applying the method for the evolutionary interpretation of the law...” (Reflète Édition spéciale. Charte des droits fondamentaux de l’Union européenne, 2013).

One of the Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, states that, “in accordance with the case law of the EU Court of Justice, the Treaties and the law adopted by the Union, based on the Treaties, have primacy over the law of Member States...”.

Moreover, the Conference decided that the Opinion issued by the Legal Service of the European Council, on 22 June 2007 – which stated that “the jurisprudence of the Court of Justice reveals that the primacy of Community law is a cornerstone principle of Community law” – should be attached to the final Act of the Intergovernmental Conference, which adopted the Treaty signed in Lisbon, on 13 December 2007.

## **2. The Provisions of the Charter of Nice (2000) regarding the Human Rights and Freedom**

The Charter of Nice (2000) grouped the Human Rights around three poles, namely:

- a) Civil rights, as provided by the “European Convention on Human Rights (Rome, 1950);
- b) Political rights, established by “the EU Treaties” and some Declarations of the Council of Europe (Dură & Mititelu, 2015);
- c) Economic and social rights, and their juridical protection (Mititelu & Mitra, 2013), as set out in “the Community Charter of the Fundamental Social Rights of Workers, adopted in 1989”.

A Protocol on “the asylum for nationals of EU Member States” reminded that, “in accordance with Article 6 (1) of the Treaty on the European Union, the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights”<sup>1</sup>.

The same was stated, in a nearly identical manner, in the text of the Protocol on “the application of the Charter of Fundamental Rights of the EU in Poland and the United Kingdom”. Among other things, this Protocol stated that the Charter “contains both rights and principles;... both civil and political provisions, as well as economic and social provisions”.

Moreover, the same Protocol on the “application of the Charter of Fundamental Rights of the EU in Poland and the United Kingdom” stated that, in Article 6 of the Treaty on the European Union, the European Union recognizes the rights, freedoms and principles set out in the “Charter of Fundamental Rights of the EU”. As such, “the Charter should be applied in strict accordance with the provisions of Article 6...”

Since the “rights”, “freedoms” and “principles” set out in the Charter of Fundamental Rights of the EU are legally binding, they should, therefore, be respected by all EU Member States, whenever it comes to the enforcement of the EU law.

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<sup>1</sup> Edit. by (Dragomir & Niță, 2009).

The same text specified that the Charter “reaffirms the rights, freedoms and principles recognized in the Union and enhances their visibility, without creating, however, new rights or principles;...”<sup>1</sup>.

In its Preamble, the “Charter of Fundamental Rights of the EU” expressly referred to “the spiritual and moral heritage” of the EU (Preamble), consisting of “shared values”, which have been expressed over time by asserting “the diversity of cultures and traditions of the peoples of Europe...”<sup>2</sup>

In the area of these traditions, there are also the “constitutional traditions” common to the EU Member States, which contributed to the affirmation, promotion and legal protection of the human rights and fundamental freedoms of the European citizen, who was born and raised within the moral and spiritual-religious heritage of Judeo-Christian origin.

The Charter of Fundamental Rights of the EU states – still in its Preamble – that these rights and fundamental freedoms “... 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”.

Therefore, the main sources of the Charter are the following:

- a) Constitutional traditions of the EU Member States;
- b) International treaties, common to these States;
- c) the European Convention on Human Rights and Fundamental Freedoms (Rome, 1950);
- d) the Social Charters adopted by the EU bodies;
- e) the jurisprudence of the EU Court of Justice (Court of Luxembourg) and of the European Court of Human Rights (Strasbourg Court or ECHR).

Therefore, the EU fundamental rights were inspired not only “from the constitutional traditions common to the Member States”, but also from “the general principles of Community law” (Sy, 2016), stated both in the text of its main legal instruments (Treaties, Conventions, Charter etc.) and in the case law of the two Courts (from Strasbourg and Luxembourg).

The Declaration on the Charter of Fundamental Rights of the EU – annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 – states that “the Charter, “*which is legally*

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<sup>1</sup> Edit. by (Dragomir & Niță, 2009).

<sup>2</sup> Official Journal of EU 2012/C 326/02.

*binding*”, confirms the fundamental rights guaranteed by the European Convention on human rights and fundamental freedoms, as resulting from the constitutional traditions common to the Member States”<sup>1</sup>.

Therefore, the Charter of Fundamental Rights of the EU did nothing else than to expressly confirm the fundamental human rights, such as they have been provided for and guaranteed by the European Convention on Human Rights and Fundamental Freedoms, proclaimed in Rome, in 1950, and as it results from the constitutional traditions of the EU Member States.

Regarding these “constitutional traditions”, some EU countries stated that, “as far as the Charter recognizes the fundamental rights and principles, as they result from the constitutional traditions common to the Member States, these rights and principles must be in accordance with the above-mentioned traditions”<sup>2</sup>, i.e. consistent with the constitutional traditions common to the Member States.

The text of this Declaration reveals the following realities:

- a) the Charter is legally binding only for the EU states;
- b) the Charter confirms the fundamental rights and freedoms such as they have been provided for and guaranteed by the European Convention, signed in Rome, in 1950, and affirmed by the “constitutional traditions” of the EU Member States.
- c) As far as the fundamental human rights and freedoms are concerned, the scope of the EU law does not extend beyond the powers and tasks defined for the Union in the Treaties.

The Declaration on Articles 75 and 215 of the Treaty on the Functioning of the European Union – annexed to the Final Act of the Intergovernmental Conference, which adopted the Treaty of Lisbon, signed on 13 December 2007 – specified “that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose, and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be adapted to the specifics of each restrictive measure”<sup>3</sup>. Therefore, the respect for fundamental rights and freedoms involve special attention in the protection of the natural and legal persons’ rights. First, this protection is materialized by the right to benefit from the guarantees provided by law. Therefore, the decisions imposing restrictive or limiting measures to such rights should be assessed under the law and should also undergo a thorough judicial review, stating to what extent the adopted criteria took into account the

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<sup>1</sup> Edit. by (Dragomir & Niță, 2009).

<sup>2</sup> Edit. by (Dragomir & Niță, 2009).

<sup>3</sup> Edit. by (Dragomir & Niță, 2009).

features of each restrictive measures, and, above all, to ensure that it did not harm the fundamental human rights and freedoms.

### **3. The Provisions of “The Charter”, Regarding the Human Rights, and Their Impact Over the Text of the Constitutions of the UE Member States**

Aware of these facts, some EU Member States stated that, in fact, “nothing in the Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in their respective field of application, by Union law and by international agreements to which the Union 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”<sup>1</sup>.

Indeed, none of the dispositions of the EU Charter of Fundamental Rights restricted and brought any prejudice to the human rights and fundamental freedoms, as recognized both by the EU law and by the Constitutions of the EU Member States, which, within the provisions of this Charter, were a sort of “*norma normans*” with European constitutional value.

In their Declaration on the Charter of Fundamental Rights of the EU, the representatives of the Government of Poland stated that “the Charter does not affect in any way the right of the Member States to legislate in the sphere of public morality, family law and the protection of human dignity and respect for the physical and moral integrity of the human being”<sup>2</sup>.

Under the provisions in the Charter of Fundamental Rights of the EU, the EU Member States can really legislate in all four areas, namely:

- a) public morality;
- b) family law;
- c) protection of human dignity;
- d) respect for the physical and moral integrity of the human being.

However, it is sufficient to examine the legislation of the EU Member States in order to realize that they have legislated only in some areas, and, sometimes, insufficiently or only partially therein. For example, in Romania, there are few laws concerning the public morality or moral integrity of the human being. Incidentally, both in the public (media etc.) and in the legal (law schools, court, judicial proceedings etc.) area, the two phrases are a sort of “*rara avis*”.

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The notion of “Morality” – which, in the era of the former communist regime, was ostracized and removed from the city – was also replaced by that of “Ethics”, which does not find its semantic equivalent in the “Moral” of humanist origin, with a content that makes reference to the moral and religious values and not to the laic, secular or anti-religious ones, such as, for example, the phrase “socialist Ethics” or “proletarian Ethics”.

In the first Declaration on the Charter of Fundamental Rights of the EU – annexed to the Final Act of the Intergovernmental Conference, which adopted the Treaty of Lisbon, signed on 13 December 2007 – stated “*expressis verbis*” that the scope of the EU law does not extend “beyond the powers of the Union nor does it establish any new power or task for the Union or modifies the powers and tasks defined by the Treaties”<sup>1</sup>.

Moreover, this Charter did not modify the application scope of the EU “Law”. The European law provisions continued to apply only within the European Union's competences, respecting the principle of subsidiarity and proportionality.

In addition, the “Declaration by the Czech Republic on the Charter of Fundamental Rights of the EU” reminded that the provisions of this Charter “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..., only when they are implementing Union law, and not when they are adopting and implementing national law independently from Union law”<sup>2</sup>.

In that Declaration, the representatives of the Government of the Czech Republic emphasized that the Charter of Fundamental Rights of the EU “... does not restrict the scope of the national law and does not restrain any current powers of the national authorities...”<sup>3</sup>.

Regarding the system of division of competences between the Union and Member States, “the Declaration in relation to the delimitation of competences” – annexed to the Final Act of the Intergovernmental Conference, which adopted the Treaty of Lisbon, signed on 13 December 2007 - stated that “competences not conferred upon the Union in the Treaties remain with the Member States”<sup>4</sup>.

According to the same Declaration, the EU institutions may decide “to repeal a legislative act, in particular better to ensure constant respect for the principles of subsidiarity and proportionality”, and the representatives of the governments of the Member States may decide – according to the ordinary revision procedure provided for by Article 48 paragraphs 2 to 5 of the Treaty on European Union – to amend

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<sup>1</sup> Edit. by (Dragomir & Niță, 2009).

<sup>2</sup> Edit. by (Dragomir & Niță, 2009).

<sup>3</sup> Edit. by (Dragomir & Niță, 2009).

<sup>4</sup> Edit. by (Dragomir & Niță, 2009).

“the Treaties upon which the Union is founded, including either to increase or to reduce the competences conferred on the Union...”<sup>1</sup>.

Therefore, the text of this Declaration reveals that the EU Member States must meet consistently the two principles, namely that of subsidiarity and proportionality. At the same time, the EU Member States can amend the Treaties underpinning their “Union”, and, *ipso facto*, extend or reduce the competences conferred upon it.

#### **4. Instead of Conclusions**

In terms of human rights – enshrined in the Charter of Fundamental Rights of the EU – it is noteworthy that it took into account only four categories of rights, namely, the civil, political, economic and social rights, as provided by the main legal instruments of the European Union. However, since the text of those instruments expressly referred to and about “freedoms” and “principles”, we also find express provisions on their compliance in the Charter of Fundamental Rights of the EU.

Nevertheless, it is noteworthy that the Charter reaffirmed the rights, freedoms and principles already recognized within the European Union. On the other hand, by reaffirming them, it actually highlighted the shared values of Member States, giving otherwise consistency not only to the religious, cultural and spiritual heritage of Europe, but also to the diversity of cultures, beliefs and traditions of the peoples of Europe.

Whereas the rights, freedoms and principles set out in the Charter of Fundamental Rights of the EU have a legal value equal to that of Treaties, the Charter is, thus, part of the EU Corpus of legislation.

The text of the Charter of Fundamental Rights of the EU has been used by the EU Court of Justice as a source of interpretation since its proclamation, i.e. since 2000. However, since its incorporation in the Treaty on European Union of December 2009, the text of the Charter has been used as a reference tool helpful to the interpretation of the EU law, thereby implementing the method of the evolutionary interpretation of this Law.

It is also noteworthy that, particularly as regards the respect for the fundamental rights and freedoms of the citizens of the EU Member States, the text of the Charter has the force of “*Jus cogens*”. Moreover, its provisions are constitutional rules within the constitutional review performed by the specialized national courts, and, as such, they are a constituting part of the national internal constitutionality, i.e. of each EU Member State.

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<sup>1</sup> Edit. by (Dragomir & Niță, 2009).



This brief presentation of the EU Charter of Fundamental Rights – proclaimed on 7 December 2000 – revealed and emphasized that, in its text, there were set out not only the “rights” and the “freedoms” of the natural or legal person, but also the “principles” that are actually constitutive part of the EU law.

In the some time, it has to be also the fact that by incorporating their dispositions within the Treaty on the European Union, the provisions of the “Charter” have to be applied as constitutional rules of the European Union, hence the obligation of its citizens to know, respect and implement them.

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