

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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<p>Recommendations regarding the Draft Charter of Fundamental Rights of the European Union</p>

I. General Considerations

The National Commission of Greece for Human Rights of Greece in principle regards the decision of the European Union to acquire its own Charter of Human Rights as a positive development. This decision is indicative, on the one hand, of its intention of stressing the importance of human rights for the European Union and, further, is an expression of the development of the process of unification, and moreover in a much broader field than the regulation of narrowly economic interests, from which the EEC set out.

However, for the new Charter to acquire at some point substantive and positive importance, it should not only not lag behind the international, and particularly the European, *acquis* in the domain of human rights, but also contribute to further development of approaches and trends which international, and particularly European, practice has generated in the direction of the more effective and substantive protection of human rights. Otherwise, this Charter may prove, in effect, superfluous, if not harmful.

We do not regard it as out of place to point out something which is already known - that all the member-states of the European Union are also members of the Council of Europe, which already has a noteworthy legal mechanism for the protection of human rights, civil and political (ECHR) as well as economic and social (following the recent codification

and enhancement with additional protocols of the European Social Charter). It would, therefore, be a step backwards which should be avoided for principles and provisions to be included in the Charter of the European Union of 15 countries which fall short of the corresponding or similar provisions of the instruments of the Council of Europe, which includes 41 countries, that is, the same 15 as the European Union but also a much larger number of others which are in a stage of 'transition' to democracy and the rule of law. Nor is it permissible to ignore the trends which are emerging from the more recent constitutions of the member-countries of the European Union vis-a-vis human rights, since these also constitute a European *acquis*.

The Charter, inspired by the above principles, could not only expressly introduce certain more 'up-to-date' rights, but also formulate certain older rights in a new spirit. We shall give below some proposed specific provisions which are based on these guidelines.

II. Specific Regulations

At the outset, we believe that a more substantive meaning of equality should be established in the Charter. Practice has shown, as is recorded in a series of historic judgments of the Plenum of the Greek Council of State (Judgments 1917-1929/1998 and 1933/1998 of 8 May 1998), that the establishment of what is simply formal equality before the law for all is a form of hypocrisy and in practice perpetuates injustice towards disadvantaged and marginalised socio-economic groups, categories, etc. The largest of these groups is made up of women (half the earth's population).

For this reason, the taking of special positive measures not only does not constitute 'discrimination' on the grounds of gender, colour, religion, etc., that is, a limitation or cancellation of equality, but a means of implementation of substantive equality and elimination of social injustice, that is, of substantive discrimination.

Permit us to draw attention to the relevant formulations on equality of the articles of the following European constitutions:

- a. German, Article 3, para. 2;
- b. Portuguese, Article 9, paras d. and h., Article 109;
- c. Austrian, Article 7, para. 2;
- d. Italian, Article 3;
- e. French, Article 3, as recently amended;
- f. Various German Laender.

It rests with the Convention to choose one of these, or some other, more apt, at its discretion, by way of formulation. In the more particular case of the equality of the sexes, practice shows to be necessary the inclusion of an express provision in the Charter, to be added after the general provision on equality. This provision should be inspired by the relevant provisions of the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has already been introduced into the legal systems of the member-countries of the European Union, since all of them have ratified it. More specifically, we believe the following wording of a paragraph additional to Article 1a of Convent. 36 to be necessary and in accord with the spirit currently prevailing at an international level and in Europe, as can be seen from specific texts of the European Union (particularly Article 2, para. 4 of Directive 76/207/9.2.1976), as interpreted by a recent judgment of the European Court in Luxembourg (Judgment 1 of 28 March 2000, Affaire Badeck C-158/97):

Substantive equality between women and men must be ensured and promoted in all fields. Any direct or indirect discrimination on grounds of gender shall be prohibited.

The taking of temporary positive measures, chiefly for the improvement of the position of women, to have force until such time as substantive equality between women and men is achieved, is called for.

We also consider that it would be useful for there to be an express statement of the principle that any transaction concerning the human body or part thereof is prohibited, as militating against the value of human beings, dignity, physical, mental and psychological health or integrity, even life itself in not a few instances, and should be punished, given that the human body is a good extra commercium. Consequently, the new forms of slavery, particularly the sexual exploitation of women and children as international organised crime, which is currently a scourge of Europe, as well as trading in organs for transplantation, often in combination with very serious crimes, must be halted by radical measures - punishing the guilty and providing social support and rehabilitation for the victims - by means of a programme of collaboration involving all the European countries. A provision to this effect should be introduced into Article 1 (Convent. 28).

Practice has shown that certain circumventions of human rights by the invocation of supposed religious, cultural and historical customs, which are today supported chiefly by political or religious authorities which are imbued with religious extremism (fundamentalism) should be stopped. Frequently, these constitute an abolition of almost all the human rights of broad masses of the people, particularly of women. We believe that the introduction into the Charter of provisions analogous to those of paras I.5 and II. B 3.38 of the Declaration and Action Plan of Vienna in 1993 on human rights is called for by the current situation, even in Europe, where large numbers of adherents of such movements (chiefly Islamic, but also connected with the Vatican) persist in following practices contrary to human rights.

It is now time for the express banning of the death penalty in member-countries of the European Union to be introduced into the Charter of human rights.

Last but not least, we consider it essential that social and economic rights in general should be reinforced by the projected Charter. The Council of Europe has already done this by the expansion and

reinforcement of the Turin Charter of 1991 (Protocol amending the European Social Charter, ETS No. 142, Law 2422/1996, OJHR A' 144) and especially by the adding to it of the Additional Protocol of 9 November 1995, which recognises for the first time a right of collective reporting-recourse in the case of violations of social rights.

What, however, calls for the greatest possible reinforcement of these rights is the factor which has emerged from international practice and was strongly emphasised by the recent World Conference of Geneva (Copenhagen +5, 24-26 June 2000): that economic globalisation is constantly becoming more inhuman and destructive of justice between individuals and countries (since a very few wealthy people, individuals and states, are becoming constantly richer, while the masses of the people and the countries of the Third World are becoming poorer). It is, moreover, also destructive of democracy itself (since ever-fewer people in each country become the chief owners of wealth and of the media). Thus, the principal power is the rule of a very few individuals, not recognised by democratic constitutions, not the result of election by the people, and to all intents and purposes without any check upon them (given that the politicians fear it and not it the politicians). To put a brake on this development, which the most effective protection of social rights possible can, at least in part, impose a check upon, will be in the interests of all - including the few rich - because in this way fatal social conflicts and wars could be avoided. The way in which Europe has developed in recent years has drawn attention to the appearance of all the above phenomena in the most glaring manner and has shown that the setting aside or limitation of social rights is a policy which is unjust, anti-democratic and senseless.

Athens, 11 July 2000