

Working Group X

Working document 7

Working group X « Freedom, Security and Justice »

Subject : Paper by Mr. Adrian SEVERIN, Romanian representative and alternate member of the Convention

"Why more Europe?"

**Mr. Adrian Severin's contribution to
The Working Group No. X on the area of freedom,
security and justice"**

Why "more Europe"? - *Civis europeanus sum!*

1. A future of freedom

According to the Eurobarometer polls European citizens have three main expectations from the future Europe. These are: security, prosperity and freedom. A specific answer to these expectations could form the element of cohesion which could keep together the European nation-states within a future Federation of nation-states or even a less ambitious European transborder democracy.

The citizens have expressed their need for freedom. If we can prove that a united Europe could provide the citizens with more freedoms and with more guarantees for the exercise of those freedoms than the actual nation states, we are able to explain why there is also a need for more Europe.

Within this context we must answer to a preliminary question: Do different European states have a different perception about the importance and the substance of different freedoms? It might be so. In this case, at least at this stage, our position must be that: number one, Europe is going to recognize and assure the enhancement of a minimal set of freedoms which are going to be common in all member states; number two, each member state may recognize to its citizens more freedoms than there are recognized at the European level, provided that these freedoms do not hinder the rights of the other citizens in the other member states; number three, all European citizens, when leaving on the territory of a certain European state, other than the state of their national citizenship, will enjoy, in the host state, the national treatment in terms of freedoms; number four, the citizens of a certain nation state, when traveling abroad in other European states, should have the possibility to obtain the recognition of their own national freedoms whenever this does not hinder the public order of the state where the said recognition is requested. All these imply the idea of a double citizenship: a national one and a European one.

On the other hand, all freedoms, be they recognized at the whole European level or at the national level only, should be protected by the right of an individual recourse to an European specialized Court or/and to a network of European judicial institutions. In this respect we must note that, already, more and more citizens of the European states enjoy and make use of their right of individual recourse to the European Court for Human Rights. This is a positive practice.

In the light of all those above, I believe that the members of the European Convention should:

- a) Constitutionalize the fundamental rights and freedoms of the European citizens by:
 - i. including the European Charter in the Constitutional Treaty;
 - ii. including the European Convention for Human Rights in the Constitutional Treaty to that extend it does not overlap and/or does not conflict with the European Charter;
 - iii. including the European Court for Human Rights in the institutional system of the European Union (a paragraph in this respect should be written in the Constitutional Treaty);
 - iv. bringing the European judiciary closer to the citizen and speeding up the European legal procedures through the establishment of regional and national branches of the European Court for Human Rights;
 - v. establishing a European Constitutional Court which, among other powers, should have the competence to look on the matters concerning the general conformity of the European and national legislation with the rights and freedoms recognized by the Constitutional Treaty.
- b) Include, in an appropriate way, among the fundamental rights and freedoms of the European citizens the right to “social solidarity” and the right to “cultural diversity”.

A certain way of life characterized by a need for social solidarity and a capacity to enjoy or at least to accept the cultural diversity, could become another element of cohesion for an emerging “European society” which might represent the embryo of a future “European nation”.

As far as the social solidarity is concerned, this could be developed through the judicial practice as well. Thus we might look for an emerging precedent law in the field of the social solidarity. This could associate better the people to the process of legislation building in that area.

As for the cultural rights it will be very important – for the matters of security as well (one has in

mind the prevention and the overcoming of the identity conflicts) – to recognize the capacity of the European (federal) courts to deal with cases resulted from “cultural disputes”.

2. A common space of justice (and security)

A common space of security and justice all over Europe will require a system of European Courts functioning at the continental (Supreme Court), regional and national level. Some of the cases should belong to the exclusive competence of these Courts. Some other cases should be addressed first by the national Courts, and the European Courts should intervene as fora for recourse only after the procedure in front of the national Courts is ended. Finally, in some cases, only the national Courts will be competent. All these levels of competences should be establish in relation with the degree of the political intervention’s intensity at the local, national, regional and continental level within the European complex.

Within a united Europe a number of collective rights should be recognized along with the classic individual rights. The collective rights should be recognized to the territorial (administrative) communities and to the cultural communities.

The territorial communities will be the nation-states, the regions (which might be inside states regions or transborder/euro regions) and, possibly, the counties. The main cases for which these communities will have the right to act and stay in justice will be connected to the Euro-constitutional issues and to the implementation of the European laws, regulation and decisions in the area of the economic development, of the social cohesion, of the territorial development and of the distribution of the structural funds. This will provide the European citizens with a filling of participation to the continental political shaping and will facilitate the creation of a fair prospective offered to everybody for a decent future in his/her own place (country). Such an approach will mean less Euro skeptic demonstrations and less migration, on one hand, and more Euro dialogue organized, controlled and structured through and by the judicial procedures, on the other hand.

As far as the cultural communities rights are concerned, the only competent courts should be the European ones when the matters in question are: a) protection of identity; b) non discrimination. The national courts will have the power to look on matters related to the balance between the exercise of the cultural rights and the civic loyalty. In some of these last cases one might recognize

a collective right of appeal to a European Court. However, it should be clear that the collective rights of the cultural communities will be restricted to the cultural identity matters and will have no territorial connotation. In order to exercise these collective rights the communities concerned must organize themselves in a legal way which will make possible, from the technical point of view, their access to the Courts.

All these above should be covered by an agreed system for an automatic recognition of the judicial awards issued in one member state of the EU by all other member states.

3. A future of security

It is obvious that the security is the main concern of the citizens of the European states. If Europe could bring them more security they would embrace the European idea. In this respect the truth is that the individual and collective security suffers from too few Europe and not from too much Europe. The problem consists in the fact that Europe is not enough well organized in order to rise at the level of its potential in the security field. One must create for each and every European citizen the status enjoyed by the ancient Roman citizens who knew that wherever they might have been their state was ready and able to defend them against any aggression. This will require the establishment of a European citizenship.

The European citizenship will imply, among others, the benefit of the national status in relation with the judiciary and with the administrative authorities in all the states which are members of the European Union. To these privileges, the full and automatic recognition of the judicial awards issued by a court in all other member states has to be added.

In supporting more security for the citizens the European Convention must ask also for:

- a) the establishment of a European Criminal Court and the adoption of a European Criminal Code;
- b) the creation of a European General Prosecutor who will have among his powers the criminal protection of the financial communitarian interests;
- c) the adoption of a common system of investigation, prosecution, arrestment and of defense rights;
- d) the consolidation of the EUROPOL by giving it operational powers;
- e) the parliamentary control over the European police, laws and regulations in this field being

adopted with a qualified majority;

f) the establishment of a common external border police as well as the development of an efficient joint defense policy of the European external borders.

An integrative idea of all those above is the one of the incorporation of the third pillar into the first pillar. This would mean that our main goal is to have a common judicial and police area in the European Union.

4. A hospitable Europe closed to the negative migration

The migration should not be seen as automatically being a source of insecurity. Europe needs and will need migration. It is about that migration which is a vehicle for crime, corruption, smuggling and cultural conflicts, which should be rejected. This is the negative migration. However, even in this last case the main solution does not lie in building walls around Europe but in offering a decent future to everybody in his/her own country. This approach should be specific for Europe as long as only a wealthy society could pursue such policies.

Security through a healthy approach of the migration matters will recommend:

- a) a common education policy, including the coordination of the schools curricula, both within and outside the Union, in order to prepare both immigrant and emigrant countries for a cultural cohabitation followed by a multicultural coexistence.;
- b) the integration of the migration policies into the common foreign and defense policy of the Union;
- c) a common asylum and immigration policy implying the adoption of common standards and concepts, a joint effort in strengthening the borders and a smart attitude towards increasing the labor markets' flexibility;
- d) a coordinated action meant to aggregate the recognition of the right to free circulation, the foreign investments policies and the programs for regional economic development within the Union.

In order to cope with the challenges of migration, the establishment of a European Authority for Migration Policies might be suggested.

As far as the protection against the criminal aspects of migration processes are concerned one should decide on a reinforced European cooperation in terms of: i. intelligence exchanges (European and regional centers for cooperation in gathering and jointly exploiting the information, should be created); ii. extraterritorial follow up and arrestment; iii. extradition; iv. operational activities.

5. Conclusions

There are to main messages which could be transmitted by the Convention to the European people:

A. We can solve better the problems related to freedom, justice and security at the continental level and by the continental cooperation rather than at the national level and by mere national efforts.

B. Europe could solve the problems related to freedom, justice and security by addressing the effects and by applying a simplistic policy or by addressing the sources and by shaping a socio-economic-cultural paradigm which will reduce insecurity by reducing the injustice of the disparities and will consolidate the freedom through both security and sustainable development. The last alternative requires an institutional structure which we must be ready to build together. This will lead towards