

Working Group II

Working document 02

Working group II " Incorporation of the Charter/accession to the ECHR"

Subject : Contribution of Elena PACIOTTI - MEP

During the first exchange of views of 25 June 2002 inside the Working Group "Charter" some observations and questions were made to which I deem appropriate to react:

1. *The Charter of fundamental rights of the European Union (from now on called "the Charter") is a political document, not a juridical one.*

No, the Charter was explicitly drafted *as if* it should be integrated in the Treaties; the aim was to leave it to the IGC in Nice to decide about whether or not it should be integrated in the Treaties. The fact that at the time no agreement was reached on the integration of the Charter in the Treaties - despite the request of several member States and of the European Parliament - doesn't change the intrinsic characteristics of the document. Indeed it is and remains formulated so as to potentially constitute the first part of a "constitutional" text, similar to the first parts of the constitutions of many Nation-States.

2. *The Charter lacks precision in many articles and this could cause judges several problems as to its implementation.*

No, it couldn't. In the first parts of many modern constitutions there are articles affirming general principles and others affirming specific rights. This has never prevented national Constitutional Courts from enforcing both. Besides, up to now fundamental rights - apart from those stated in the European Convention for Human Rights now included in the Charter - have been granted by the European Court of Justice on the sole basis of a much more generic mention to "constitutional traditions common to the Member States" in article 6 of the TEU.

3. *The Charter includes principles and rights which do not concern the European Union competencies:*

- a) *Why? b) If the Charter is integrated in the Treaties, will this give rise to new competencies of the Union?*
- a) The Charter was drafted to render the whole of the fundamental rights already into force in the European Union more evident, following the principle of the indivisibility of fundamental rights. It would have been absurd to try and highlight only those rights involving present competencies of the Union and of the Community: firstly because it would have meant redrafting the Charter with every change in the framework of the Union's competencies; secondly because, above all, the meaning of every single article of the Charter must be interpreted in the context of all the others and the scope of a fundamental right is in relation to the need to guarantee other rights (quite evidently, affirming the freedom principle alone is different from affirming the freedom, equality and solidarity principles together).
- b) The need to draft an exhaustive list of fundamental rights and principles in force in the EU has nothing to do with the attribution of competencies. The powers of the EU and EC institutions are foreseen in the Treaties and their exercise is limited by the obligation to respect the fundamental rights and principles included in the Charter.
- In the framework of their specific competencies, the institutions also have the right to promote the respect of those rights and principles.

4. *Is the Charter, with its 54 articles, too long to be part of a simplified "constitutional" Treaty?*

No, it isn't. All contemporary constitutions are "long" constitutions because the catalogue of fundamental rights that citizens want to be granted has widened and the complexity of procedures concerning the exercise of public powers in modern States has grown. This is all the more so for such a complex supranational entity like the European Union.

For example, while the Swedish constitution of 1809 has 13 articles, the Italian one of 1948 has 139 articles (54 of which constituting its first part), the German one of 1949 has 146 articles, the Portuguese one of 1976 has 299 articles and the Polish one of 1997 has 243 articles (57 of which constituting the Chapter "Freedoms, rights and duties of man and citizen").

Brussels, 26 June 2002