

Working Group II

Working document 17

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

Subject: Enforceability of the Charter of Fundamental Rights and improvement of the individual's right to legal redress

Working Document by Professor Jürgen Meyer, Delegate of the German Bundestag to the Constitutional Convention of the European Union

Proposal: The second half of Article 230 (4) EC be amended to read as follows:

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct **or** individual concern to the former.

Grounds:

Make it clear that the Charter is enforceable

A Charter which, although binding as part of community law, cannot be enforced by the individual, or only under onerous conditions, will not be accepted by the citizens. The Convention must therefore clearly answer citizens' questions about the procedure by means of which they can they directly enforce their Charter of Fundamental Rights.

The best way of ensuring the strictly binding nature of the individual rights set out in the Charter, and in particular the right to effective judicial redress set out under Article 47, is a modification to the current system for obtaining individual legal redress. The proposal put forward here allows the citizens to bring a claim for breach of their (fundamental) rights before the European Court, directly and by their own decision.

A provision should be inserted into the text of the Charter, into Article 47 for example, which makes reference to such a remedy:

“Under the conditions set forth in Article 230(4) EC, every person shall have the right to bring a claim due to a breach of the rights and freedoms recognised in this Charter.”

Make it easier to bring direct claims before the European Court

There are two situations, in particular, where the individual should not find himself in a position where he can obtain legal address only after a specific measure directed against him has been taken. Challenges to a Community decision should be admissible,

1) if a decision taken is of direct concern to him, i.e. the legal measure subject to the challenge directly affects his legal position and there is no margin for discretion regarding an implementation measure that may be required,

or

2) if a decision taken is of individual concern to him, i.e. the legal measure subject to the challenge affects him due to certain personal characteristics or special circumstances and therefore individualises him in a way similar to a decision addressed to a specific person.

Both situations in which a citizen may find himself, should be seen as independent from one another. *Each* one requires that it be possible to determine legality without further delay. The proposed amendment therefore changes the two requirements of Article 230(4) EC, which until now had to be applied cumulatively, with the result that they now represent alternative options.

Remove the deficiencies in the existing system for obtaining legal redress

One aim of the proposed reform is to close the gaps which are present in the existing system for obtaining legal redress. In practice, the two options for seeking legal address – i.e. direct claims and the preliminary decision-making procedure – have, in certain cases, failed to provide effective legal protection for the citizens.

Until recently, the expectation was that the European Court might change its established practice with respect to the admissibility of direct claims by private individuals. In its judgement dated 25th July 2002, however, it stated that on the basis of the wording of Article 230 EC, further easing of the conditions for an individual claim was not possible. Express reference was made to the possibility of a change in primary legislation.¹

The proposed amendment reliably ensures that all claims which were admissible under existing law, would still be so after the amendment. The procedural *acquis communautaire* remains fully intact.

The additional workload for the courts is not a convincing objection

It is true that this amendment will probably increase the workload of the European courts. However, in a community based on constitutional rights, this must not prevent the implementation of a change in the system for obtaining legal redress that is considered to be expedient. Rather, the Court of First Instance attached to the European Court of Justice must be provided with the necessary institutional and human resources to enable it to guarantee effective legal protection for the entire duration of the proceedings. The reform of the judiciary by the Nice Treaty has brought about improved conditions in this respect (Art. 225, 225a EC).

¹ Judgement of the European Court dated 25th July 2002, Rs. C-50/00 P, Unión de Pequeños Agricultores/Rat, not yet published in the official law reports, marginal note no. 40 et seq.