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*THE NECESSITY OF ADOPTING A COMMUNITARIAN REGULATION  
REGARDING HUMAN RIGHTS*

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*Abstract*

*One of the basic principle of the European Union and the essential condition on which is based its legality is the respect of the fundamental rights.*

*The Court of Justice reaffirmed in many turns this obligation of the European Union. At this time, in all Europe, the problem of human rights must be looked from two perspectives.*

*Nowadays, the only control mechanism of respecting human rights is the European Court of Human Rights (CEDO), which started to work in the new formula at 1 November 1998. Any limitations in exercising the rights and freedoms accepted by the Charta must be in the law and to respect the essential content of the rights and freedoms mentioned.*

The respect of the fundamental rights is one of the basic principle of the European Union and the essential condition on which is based its legality. In the first paragraph of Article 6 (F) from the European Union Treaty is mentioned that the Union is relied on the principles of liberty, democracy, respecting the fundamental human rights and liberties of the law state, common principles of the Member States, and the second paragraph of the same article underlines that: the Union will respect the fundamental rights guaranteed by the European Convention for the Protection of the Fundamental Human Rights and Liberties, signed at Rome on 4 November 1950, rights that have their provenience from the common constitutional traditions of the Member States, as general principles of the communitarian law. The Court of Justice reaffirmed in many turns this obligation of the European Union.

At this time, in all Europe, the problem of human rights must be looked from two perspectives. On one side, depending on the European Council norms in the domain of the human rights, protection of the rights and liberties is the main objective of this European organization, and on the other side regarding the documents of the European Union which, it looks like, are more and more involved in this domain. This demonstrate first of all that the proclamation, in December 2000, of the Charta of Fundamental Human Rights in the European Union, a document that is distinct to the European Convention of Human Rights, adopted by the Europe Council in 1950 [1] and, including this Charta , integral, in the stipulations of the Treaty of institution of the European Constitution.

Regarding this aspects, a first distinction must be retained between the two documents reminded earlier: Charta of Fundamental Human Rights in the European Union and the European Convention of Human Rights.

Another distinction that must be made is the one between European Council - like an intergovernmental organization with regional character that acts in favor of the European unity by: protecting and strengthening the pluralist democracy and human rights; defining common solutions for the problems of the society; the understanding and reevaluating of European cultural identity - and the European Council and the European Union Council that are institutions of the European Union.

Nowadays, the only control mechanism of respecting human rights is the European Court of Human Rights (CEDO), which started to work in the new formula at 1 November 1998. Until that date, for protecting the rights and liberties sustained by the Convention, the persons who considered that those were violated, could introduce a complaint to the Commission, against the state responsible for violating those rights and liberties, under the condition that the state in cause recognize the competence of the Commission to take notice of those complaints. The Commission could, also, be informed with a complaint by a state regarding the violation of the Convention by another state [2].

The social implications of the realization of the Economic and Monetary Union and of the introduction of the EURO, sustained the importance of assuring fundamental rights to a European level. So, the fundamental rights were considered as an indispensable part in building a social union and guaranteeing and developing European social model.

Although some specialists[3] sustained it wasn't necessary a new Charta, as long as existed already the European Convention of Human Rights and European Social Charta, it was concluded that these documents aren't sufficient ample, and can't be legally applied to guarantee the whole gamma of civil rights, political rights, social and economical rights. A "*European Charta of fundamental human rights*" could have given for the first time to everyone that lives in the European Union a common frame of greater applicable rights.

Regarding this context, at the summit in June 1999, was decided the elaboration of a "*Charta of Fundamental Rights for Europe*". The support for the European integration project risked to be lost through the social effects of introducing the unique coin and the finalization of the Unique Market. The citizens lost faith in Europe. It was important that in that moment the social

dimension of European integration to be reaffirmed by pointing out the importance of protecting fundamental rights to a European level.

In October 1999, meeting at Tampere, in Finland, the European Council decided to found a Convention composed by national and European parliamentary[4], and also representatives of the governments, to elaborate the Charta of rights, Convention that should take place at regular intervals through the year 2000 and consulting with a large specter of civil society organizations, before elaborating and adopting the Charta, until October 2000.

### **The content of the European Union Charta regarding the Fundamental Rights**

Charta of Fundamental Human Rights in the European Union reaffirms the rights that results especially from the constitutional traditions and from the common international obligations of the member states.

The content of the Charta is extended more than European Convention of protecting human fundamental rights and liberties. If this Convention is limited only to the civil and political rights, the Charta, also the economical and social rights stated by the Communitarian Charta of social rights of the workers, adopted in 1989, and also the cultural rights.

In the condition of the actual treaties, the Union has no competence to impose the European Convention of human rights, from Rome. On the other hand, the Constitution refers express to next possibility of the Union of adhering to this Convention (art.9).

The preamble of the Charta says that "the Union is established on the indivisible and universal values of human dignity, liberty, equality and solidarity. Is based on the principle of law state, putting the person in the center of its actions, instituting the citizenship of the Union and making a space of liberty, security and justice".

Charta reaffirms the rights that results especially from the constitutional traditions and from the common international obligations of the member states, from the European Convention of protecting human fundamental rights and liberties, from the social Charta adopted by the Union and by the European

Council, and also from the jurisprudence of the justice Court of the European Union and the European Court of human rights[5].

In the Charta, the rights, liberties and fundamental principles are divided in six titles, a seventh title defining general dispositions.

So, in Title I, named "*Dignity*" are written the next: human dignity; the right to live; the right to human integrity; the interdiction of torture and punishments or inhuman treatments; interdiction of slavery and forced labour.

In Title II, named "*Liberties*" are enumerated: the right to freedom and security; respecting private and family life; protection of data with special character; the right to marriage and to start a family; the freedom of thinking, conscience and religion; the freedom of expression and information; the freedom of gathering and association, the freedom of art and science, the right to education, professional freedom and the right to work, the freedom to develop an economic activity; the right to posses, the right to asylum; protection in case of evacuation, expulsion and extradition.

In Title III, named "*Equality*" are written the next: equality in rights; indiscrimination, cultural, religious and linguistic diversity, equality between men and women, the children rights; the elders rights, integrity of the persons with disabilities.

In Title IV, named "*Solidarity*" are written the next: the right of workers to information and consulting inside the company; the right to negotiation and collective activities, the right to access the shelter services, protection in case of unjustified dismissal; correct and equitable work conditions; interdiction of children labour and protection of the young at the work place; professional and family life, social security and assistance[6], medical assistance, access to services of general economic interest, environment protection, consumers protection.

Title V of the Charta, is consecrated especially to the presentation of the European Union citizens rights.

European Union citizenship was instituted by the stipulations of the Maastricht Treaty, which introduced in C.E. Treaty Part II named "*The Union citizenship*" having art.8(17)-8E(22).

The rights that emerge from the quality of citizen are:

1. *The right to elect and be elected in the European Parliament.*

According to this disposition any citizen, man or woman, from the Union has the right to elect and be elected in the election for the European Parliament, in the member state where he is resident in the same conditions as the resortisant of that state. The members of the parliament are elected by universal, direct, free and secret vote.

*2. The right to elect and be elected in the local elections.*

Any citizen, man or woman, from the Union has the right to elect and be elected in local elections in the member state where he is resident in the same conditions as the resortisant of that state.

*3. The right to good administration*

Any person has the right to benefit from an impartial treatment from the institutions, organizations and agencies of the Union, regarding his or hers problems. This right involves, especially: the right of each person to be listen before taking any individual measure which can affect her/him in an unfavorable way; the right of each person to access his own dossier, with respecting the legitimate interest regarding confidentiality and professional secret; the obligation of the administration to motivate its decisions. Also, each person has the right to ask for compensation from the Union for the damage caused by institutions, organizations or agents which execute their duties, according to common general principles and the rights of the member states.

*4. The right to access files.*

*5. European Mediator[7]*

Any citizen, man or woman, of the Union and any physical or juridical person, with residence in one of the member states has the right to inform the European mediator regarding some cases of bad administration in the activity of institutions, organizations and agencies of the Union, except the European Justice Court and General Court, in the exercitation of theirs jurisdictional functions.

*6. The right to petition*

*7. Traveling and staying freedom*

According to this disposition any citizen of the Union, has the right to travel and stay free on the territory of member states. The freedom of traveling and staying can be given, according to the Constitution, to any resortisant.

*8. Diplomatic and consular protection*

Any citizen of the Union benefits on the territory of a third state in which the member state whom citizenship he has, is not represented, by the diplomatic and consular protection of any member state, in the same conditions as the citizens of that state.

In Title VI of the Charta, named "*Justice*" are underlined the next:

1. *The right to gain access to an impartial court*

Any person whom rights and liberties granted by the law of the Union are broken has the right to gain access to a court. Any person has the right to have his cause analyzed in an equitably way, public and in a reasonable time by an independent and impartial court, established earlier by law. Also, any person has the possibility to be conciliated, defended and represented. Free juridical assistance is given to those who can't afford the assistance to justice.

2. *The presumption of innocence and the right to defend*

3. *The principles of legality and proportionality of crimes and punishments*

No one can be condemned for an action or inaction that, in the moment that was committed, wasn't considerate a crime according national or international law. At the same time, is not given any punishment bigger than the one given at the moment when the crime was committed. The punishment can't be disproportional to the crime.

4. *The right not to be judged or punished two times for the same crime*

In the final part of the Charta are presented general dispositions that regulate the interpretation and its applicability.

So, the Charta does not extend the applicability of the Union law outside the borders of the Union, does not create any competence and responsibility for the Union and does not modify the competences and responsibilities established by the other parts of the Constitution.

Any limitations in exercising the rights and freedoms accepted by the Charta must be in the law and to respect the essential content of the rights and freedoms mentioned. Respecting the constitutionality principle, it can be limited only if necessary and if it responds to the general interest objectives recognized by the Union.

No disposition of the Charta must be interpreted as if it limits or brings touch in their appliance field, fundamental human rights and freedoms

recognized by the European Union law, international law, international convention at which the Union is part or all the member states, especially the European Convention of defense of fundamental human rights and freedoms, also by the Constitutions of member states[8].

Also, no disposition of the Charta must be interpretive as involving a certain right to carry on an activity or make an act that has as objective the destruction of the rights and freedoms recognized by the Charta, or to bring to the rights and freedoms biggest limits than the one from the Charta.

The special attention that the European Union given to the problem fundamental human rights came from the fond conditions and those of politic nature established, that must be fulfilled by any state that wants to be member of this international organization.

#### REFERENCES

[1]Guy Isaac, Blanquet M. , *Droit de communautaire general*, Paris, Masson, 2001,page. 205

[2]The role of the Commission was to examine these complaints , establishing the facts and trying to solve them in a peaceful way. When the solution was not a peaceful one, the Commission wrote a report regarding the fact that was or wasn't a violation of the Convention stipulations. The report which contained the opinion regarding the allegation of violating the stipulations of the Convention, was sent to the Ministry Committee of the European Council. In a three months interval from the elaboration of the report, the European Court of Human Rights could be informed, or by a state or by a group of states interested regarding the violation of the dispositions of the Convention. For the Court to intervene was necessary, beforehand, a decision of the Commission, and the rejected decisions pronounced by the Commission couldn't be censored by the Court, which didn't have competences in that sense.

[3]Philip Manin, *Les communautes europeennes. L'Union europeenne. Droit institutionnel*, Paris, Ed. A. Pedone, 1993, page. 165.

[4]Marian Mihăilă, Dan Stan, Carmen Suciuc, *Communitarian Institutional Law*, Publishing house „Eftimie Murgu”, Reșița, 2000

[5]Octavian Manolache , *Communitarian law Treaty*, Publishing house C.H.Beck, Bucharest, 2006, page 89.

[6]Augustin Fuerea ,*The European Union Book*, Publishing house Universul Juridic, Bucharest, 2006,page143.

[7]The European Mediator which is elected by the European Parliament receives complaints regarding the cases of bad administration inside the institutions,



organizations and agencies of the Union in the terms written in the Constitution, investigates them and makes a report regarding those complaints. The European Mediator exercises his attributions in full independence

[8] Nicoleta Diaconu, European Union Law, Publishing house „ Lumina Lex”, Bucharest, 2007, page 278

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*Résumé*