

The charter of fundamental rights : a CRUCIAL statement of social and trade union rights

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The European Union Charter of Fundamental Rights is of enormous significance for the evolution of the European Union (EU), and thus for the trade union movement and European social policies. For the first time since the founding of the European Economic Community in 1957, the Charter sets out in a single text the whole range of social, economic, civil and political rights that all European citizens are entitled to. These are the inalienable rights, principles and values that EU institutions must take account of when they enact and implement European law.

Although it was not integrated into the EU Treaties, (which form the legal base on which the Union operates), the Charter of Fundamental Rights is an important part of the draft EU Constitution. Since 2000, the rights enshrined in the Charter have had a growing impact on the work of all the EU institutions, including the European Courts, where Advocates-General have referred to it in a number of cases.



I Introduction : A Charter essential to all European workers

What does the Charter say ?

The EU Charter of Fundamental Rights covers six categories of rights : dignity, freedoms, equality, solidarity, citizenship and justice.

Within these chapters are provisions that lie at the heart of labour law and industrial relations in Europe, covering trade union, social and employment rights - central to the mission of the trade union movement.

Why do European workers need a Charter of Fundamental Rights ?

At its inception, the European Union was seen first and foremost as an economic entity, built around economic cooperation, a single market and a single currency. Economic prosperity is necessary for social progress, but this model of economic unity can only work properly in a society where the fruits of growth are shared equally.

It will need time, and a lot of energy, to ensure that social issues are taken fully into account. The solemn proclamation of the Charter of Fundamental Rights in 2000 was a turning point for citizens, for employees, and for trade union organisations.

Why are fundamental rights important at European level ?

The Charter gives moral legitimacy to the EU as a political entity. It expresses the shared values that form the basis of our democratic society. It establishes rights and responsibilities for the social partners and workers.

Establishing social standards at a European level is a very important aspect of strengthening and developing the social dimension of European integration. If European citizens cannot see any tangible progress towards improving the conditions of their everyday lives, the whole future construction of the European project will be in question.

Finally, in a situation of social instability, the role of the trade unions in securing rights that have not so far been obtained is more important than ever. The Charter contributes to this objective.

What further fundamental rights is the trade union movement claiming ?

Besides what is already included in the Charter, the European trade unions are calling for :

- The right to work for all, with no discrimination;
- Active labour market policies to support workers in cases of restructuring or relocation (as is the case in Nordic countries), whether it be through the right to retraining and lifelong learning, assistance for older workers in re-entering the labour market, or retirement rights for all;
- The right to a minimum income for all European workers, according to the rules in force in their countries.

Is the Charter a floor or a ceiling ?

For the European trade union movement, the Charter is a launch pad, not the end of the story.

The Charter lays down universal and inalienable rights. In particular, it guarantees the right to collective action, which is vital for trade unions, as shown by the recent 'Vaxholm' (Laval) case in Sweden. In the town of Vaxholm, the Swedish trade union Byggnads and others affiliated to LO, a member of the ETUC, took action in protest at Latvian workers being employed by the Latvian construction company Laval on wages and conditions below Swedish rates. This, the union pointed out, undermined Swedish collective agreements and amounted to a clear case of social dumping, going against everything the EU should stand for in terms of levelling up working conditions for people in the poorer Member States.

II Historical context: how was the Charter drawn up?

December 1999-October 2000: drafting of the text of the Charter of Fundamental Rights by the European Union's first Convention.

December 2000: the ETUC calls a demonstration of 60,000 workers in Nice, demanding that the Charter be made legally binding.

December 2001: the European Council in Laeken, Belgium, decides to set up a second Convention to draw up a European Constitution.

July 2003: the second Convention completes its work and submits its draft to the EU Presidency.

October 2003-October 2004: Intergovernmental Conference (IGC) takes on the task of completing the final text of the European Constitution.

29 October 2004: in Rome, signing of the Treaty setting out a Constitution for Europe and opening of the period of ratification. The rights laid down in the Charter comprise Part II of the Constitution.

The ETUC took a position in favour of ratification of the Constitution.

III The limits of the Charter: what did the ETUC fail to obtain?

Some important rights for workers are not included in the Charter. The ETUC proposed:

- Recognition for transnational workers' rights (i.e. the right to information and consultation within the undertaking, freedom of assembly and association, collective bargaining and above all industrial action) in a way that fully respects the national systems of collective bargaining and action;
- Autonomous rights for the social partners at European and cross-border level;
- An obligation on Member States to respect equivalent rights within European and international instruments.



IV What does the Charter offer me, as a European worker ?

The Charter guarantees trade union, social and labour rights

1. Trade union rights

Article II-72: Freedom of assembly and of association

Article II-87: Workers' right to information and consultation within the undertaking

Article II-88: Right of collective bargaining and action

2. Social rights

Article II-81 : Non-discrimination

Article II-83 : Equality between men and women

Article II-94 : Social security and social assistance

Article II-95 : Health care

3. Rights at work

Article II-75: Freedom to choose an occupation and right to engage in work

Article II-90: Protection in the event of unjustified dismissal

Article II-91 : Fair and just working conditions

Article II-92: Prohibition of child labour and protection of young people at work

In encouraging social dialogue and the coordination of employment policy, the Charter will have an influence on the everyday life of European citizens.

How do citizens and trade unions exercise these rights ?

If citizens or organisations believe their fundamental rights are under attack, they must first make representation to a national court. If appropriate, the judge may refer the question to the European Court of Justice (ECJ). The Charter also makes it easier for the European Commission to challenge individual Member States if it suspects abuses.

The Charter applies equally to the way national governments transpose and implement EU laws.

Since 2000, more and more European citizens are referring to the Charter provisions in petitions and complaints to the European Parliament and Commission.

Concrete examples of how the Charter can improve my rights as a worker

The following examples show the potential impact of a legally binding Charter in resolving or preventing social conflicts.

A Saint-Nazaire victory: respect for rights and non-discrimination of Polish workers

The Charter prohibits all discrimination on grounds of nationality (Article II-81).

Following an initial success in August 2005, 21 Polish employees of the insulation company Gawa, subcontracted to the *Chantiers de l'Atlantique* (Atlantic workshops) in Saint-Nazaire, France, obtained back-payment of salary and recognition of their employment rights. The agreement, reached after a one-day strike supported by the French CGT on 2 December 2005, secured the payment of other monies due as salary, paid holidays, overtime etc, plus the retrospective application of the full range of rights contained in the collective agreement of metalworkers of the Loire-Atlantic (working time, travel expenses etc).

This is not only a victory over the provisions of the original draft Services Directive, but also a success in the spirit of the Charter of Fundamental Rights.

Italy: discrimination against temporary workers defies the essence of the Charter

The Charter guarantees fair and just working conditions (Article II-91).

“I work with people who talk about trade union meetings, collective agreements, paid holidays, bonuses and a thirteenth month. I do the same work, but I am not protected against dismissal or victimisation. Long service is not recognised. I would like security covering illness or maternity, without the risk of losing my job and my income. I would like to have the benefit of paid holidays and a positive prospect when I get older and take retirement.”

“Over the last ten years, I have changed jobs at least a dozen times and had some 20 employers. I have had to work on Sundays, and not fall sick or take any days off.”

The stories of Sabine and Roberto, two young people aged 29 and 31, show what happens in Italy since Law 30 came into force. This law made young people's work more insecure and their entry into the labour force more difficult. It set up discrimination in salaries, working hours and conditions between workers on permanent contracts, on the one hand, and workers engaged by 'project' - part time, temporary etc. - as defined by Law 30.

All this is contrary to the spirit and the provisions of the Charter of Fundamental Rights.

New recruitment contract in France – dismissal without justification

The Charter protects workers in the event of unjustified dismissal (Article II-90).

A law of July 2005 creating a new type of work contract, the new recruitment contract (contrat de nouvelle embauche/CNE), reserved for companies with less than 20 employees, flouts dismissal laws. During the first two years, a worker can be sacked at a moment's notice, without the employer having to establish a 'real or serious cause', as laid down by French law with regard to other forms of short term or permanent contract.

Reinforcing gender equality at work

The Charter declares in Article II-83: "Equality between men and women must be ensured in all areas, including employment, work and pay." Across the EU, the gap between male and female average hourly pay has changed little since 1998, with women's rates still 15% below men's. The rate of unemployment among women is also higher. Although equal pay for work of equal value is already enshrined in EU law, the Charter would make equality a fundamental right for all European citizens.

In defence of collective action

The Charter guarantees freedom of assembly and of association (Article II-72).

In recent years, some national governments in the EU have introduced laws to restrict trade union rights to collective action, for example by introducing rigid and complicated procedures before strikes are authorised, or outlawing solidarity action. These measures may involve interference in a trade union's internal affairs, set obstacles to recognition by an employer, or limit access to members at the workplace or the right to undertake union activities.

A global model for fundamental rights

Once the Charter becomes legally binding, the EU will be in a stronger position to introduce its political, civil, social and environmental provisions when it negotiates international treaties and conventions. This will be of great importance to workers around the world, and especially in developing countries. For example, the EU negotiators at the World Trade Organisation ministerial meeting in Hong Kong in 2005 could have taken a stronger stand in defending fair treatment as well as social and environmental standards in trade agreements.



V A legally binding Charter

When the EU Charter of Fundamental Rights becomes part of the constitutional law of the EU, it will be legally binding (or 'judiciable') in all Member States, which must recognise the supremacy of European law. The legal standing of social rights will also put pressure on the Commission to propose means of implementing them.

For the moment, the Charter not only has a base within the existing Treaties, but is also achieving recognition through European jurisprudence.

The EU can suspend the rights of Member States if they breach these principles (Treaty on European Union/TEU Article 7), which apply equally to all incoming new members (Article 49). The Treaty also gave the European Court of Justice the power to ensure that EU institutions respect citizens' fundamental rights (Article 46).

Judicial action

The ECJ will be legally responsible for ensuring the Charter is respected. The Charter offers a judicial base that the Court can refer to in protecting fundamental rights.

The impact so far

Since 2000, the Charter of Fundamental Rights has already proved to be both an inspiration and a point of reference for the European Courts. Within two years of its proclamation, the ECJ Advocates-General had already referred to it in more than half the human rights cases they handled. The Charter is not "a mere list of purely moral principles without any consequences". According to Advocate-General Tizzano it is "a substantive point of reference for all those involved: Member States, institutions, natural and legal persons".

In this way, the Charter has the potential to **become mandatory** as it is woven into the jurisprudence of the EU.

The Court of First Instance, and even the European Court of Human Rights (the Court of the Council of Europe) have also made reference to the Charter in judgements.

This is of crucial significance to the trade union movement. For example, the British Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) complained to Europe over the way the British government had transposed part of the EU Working Time Directive into law. Many of BECTU's members are casually employed media workers, and UK law required individuals to work for the same employer for at least 13 weeks, uninterrupted, to qualify for paid annual leave. Advocate-General Tizzano

referred to Article II-91 of the Charter as “confirmation of the fact that the right to paid annual leave constitutes a fundamental right”.

Conclusion

The Charter creates a political dynamic. In proclaiming it, the Member States unanimously adopted the principles governing trade union, social and labour rights. On the basis of this consensus, the European institutions will from now on be responsible for putting these principles into effect. The social partners will have an instrument for persuading all the actors involved at European and national level to move towards a mutual strengthening of the social dialogue.

The Charter is a springboard. Its integration in a future EU treaty will guarantee the full and unlimited recognition of the fundamental rights written into the Charter. These will need to be expanded further, for instance by acknowledging the right to international solidarity strike action or moving from the right to work to the right to full employment. In addition to fundamental rights, there are other social rights to be won through framework agreements or directives. For example, this entails revising and improving the directives on information and consultation, and on working time.

In this way we can build Europe together, and contribute to defining and improving the European Social Model.

For more information, consult the ETUC website : <http://www.etuc.org/r/168>

