"New" and "Existing" Rights in the Charter of Fundamental Rights of the European Union

Gabriela NEMȚOI¹

¹Associate. Prof. PhD, "Ștefan cel Mare" University of Suceava, gabriela.nemtoi@fdsa.usv.ro

Abstract: Considered a fundamental document, the Charter of Fundamental Rights of the European Union aims to bring together all the civil, political, economic, social and cultural rights that citizens and residents of the Community can enjoy in order to outline the EU's obligation to respect these fundamental rights.

Thus, from the perspective of the content of the Charter, civil and political rights can be understood as those rights necessary for the assertion of the individual and defined by the action of their holder (Muraru & Tanasescu, 2008, p. 142) and in contrast are the economic, social and cultural rights that can be understood as those rights recognized to individuals, in their capacity as members of certain social categories.

Through its content, the Charter reaffirms the rights that arise from the content of national constitutions and international obligations, common to the Member States.

Thus, these rights stand out as a foundation that is built on the European Convention for the Protection of Human Rights and Fundamental Freedoms, on the Social Charters adopted by the EU, on the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights.

In this context, it should be noted that the Charter is the first normative act that manages to codify in a single document, the main civil, political, economic and social rights (Douglas-Scott, 2011, pp. 645-682), enshrined in previous Community Treaties.

Under the auspices of the Charter, we will try to point out the innovative aspect that this document.

Keywords: *The right to marriage, the right to data protection, the rights of the best interests of the child.*

JEL Classification: K10, K39

How to cite: Nemțoi, G. (2020). "New" and "Existing" Rights in the Charter of Fundamental Rights of the European Union. *Logos Universality Mentality Education Novelty: Law*, 8(1), 16-23. doi: 10.18662/lumenlaw/8.1/32

I. Introduction

Considered a legal document codifying the main civil, political, economic and social rights, previously recognized in documents such as the European Convention on Human Rights or the European Social Charter or the Community Charter of the Fundamental Social Rights of Workers, the act itself seeks to compile certain rights, which initially, although they were mentioned, were present only formally, quantitatively but not qualitatively, providing only a source in perspective.

Structured in 54 articles and divided into 7 chapters, The Charter enshrines three categories of rights:

- Civil rights, which can be found in Titles I-III and, respectively, Title VI, remember: human rights and the right to justice;
- Political rights, as set out in Title V, derived rights and the status of European citizenship;
- Economic and social rights, summarized in Title IV, rights that refer to workers' rights, family protection, and the right to health.

Following the structure of the Charter, we appreciate the fact that the first three chapters are recorded on human dignity, the right to life, and the right to the integrity of the person, freedom of expression or freedom of conscience. The chapter entitled "Solidarity" develops social and economic rights such as: the right to strike, the right of employees to information and consultation, the right to family life and professional life, the right to social protection, the right to social services guaranteed by the EU, health protection, etc.

Although the chapter entitled „Solidarity” is defined by the establishment of economic and social rights, it can be seen that the Charter fails to classify civil or economic or social rights as statutory. As such, it should be emphasized that the right provided in art. 33 of the Charter (paragraph 1 – “The family enjoys legal, economic and social protection” - and paragraph 2 – “In order to be able to reconcile family and professional life, everyone has the right to be protected against any dismissals for maternity reasons, as well as the right to paid maternity leave and prenatal leave granted following birth or adoption of a child”), which is part of the chapter “Solidarity” and which establishes the legal, economic and social protection of family life and professional life is different from the right provided in art. 7 of the Charter (“Everyone has the right to respect for private and family life, home and secrecy of communications”), which although it refers to the family, cannot be included among the social rights.

The distinction between the two rights is based on their respective content and nature. If the right provided in art. 7 of the Charter is a civil right, the right provided in art. 33 of the Charter is a social right with economic intercalations.

The Charter develops the principle of gender equality, introduces new rights, such as the protection of personal data, the prohibition of the practice of eugenics and cloning of human beings, the right to a protected environment, the rights of the child and the elderly or the right to good administration, demonstrating its innovative content, a vast content compared to that of the European Convention on Human Rights, which signals only the civil and political rights to which the European citizen accedes.

The Charter provides for a number of rights that are not explicitly outlined in the European Convention on Human Rights. In this context, the Charter can be considered a complex and avant-garde legal instrument (Vrabie, 2017, p. 70).

Thus, the Charter represents the legal support of some rights that were not developed in the previous treaties, in this sense we mention the existence of a right to an effective judicial appeal - the appeal being possible in accordance with the Charter, in order to defend all protected rights, the right to marriage – what it is not based on the classical conception of a family consisting of a husband and a wife, but recognizes other forms of founding a family, but without explicitly mentioning the need for the family to be made up of a man and a woman; the right not to be tried or punished in criminal proceedings, twice for the same offense which applies not only within the same Member State but also between the jurisdictions of several States (Dumitrascu, 2012, p. 134).

The Charter is not just a legal instrument guaranteeing rights but is a codex that extends the scope of rights from their position to a broad, exaggerated, generalized perimeter so that the European citizen exists in a context of full effectiveness.

II. Social rights

The Charter's innovations concerns, in particular, social rights, which have developed in the second generation, rights resulting from the four fundamental freedoms of the internal market in the EU and new, modern rights which are the result of social evolution.

Second generation social rights involve actions, measures, guarantees and are recognized to individuals as members of certain social categories (Muraru & Tanasescu, 2008, p. 144).

Social rights, established as elements of novelty, regard in their content an aspect of protection, they protect the social categories of disadvantaged people in terms of their economic status. In this respect, the expansion of a phenomenon that provides increased protection against children, women, the elderly, or people with disabilities or persons belonging to national minorities can be seen in the European Union.

The principle of the superiority of the child's interest is an express regulation, outlined by art. 24 of the Charter. The introduction of this regulation grants children the right to protection and security, in all actions in which they are present regardless of whether these actions are within the competence of public authorities or private institutions.

The principle of the superiority of the child's interest establishes a new current, being an important progress, in the community space, because the protection of children develops another branch of rights, namely the role and rights of the family in society. The lack of these stipulations regarding the best interests of the child, in the documents prior to the Charter, positions the document at a high level, thus giving it major importance in the context of similar documents in the EU, the European Convention on Human Rights (The principle of superiority of the child's interest is also enshrined in the jurisprudence of the ECHR, case Ignaccolo-Zenide v Romania application no. 31679/96 ECHR, point 94).

The special protection of women is another right initiated by the Charter, it refers to social rights (art. 23 of the Charter states the following: "Equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality does not preclude the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex"). The exclusion of discrimination regarding the gaining of jobs between men and women is a motivated guarantee and in this sense the Charter through art. 23, gives security to the woman. At the same time, the woman has a special protection indirectly, by protecting the biological condition of the mother, a guarantee outlined by art. 33 paragraph (2) of the Charter, which prohibiting any form of dismissal for maternity and ensures paid maternity leave or even parental leave after birth or adoption.

Another new right is the increased protection of the elderly, through art. 25 of the Charter (article 25 of the Charter states that: "The Union shall recognize and respect the right of the elderly to live a dignified and

independent life and to participate in social and cultural life”). The right to participate in social and cultural life under the aegis of the right to life and dignity, gives this new right an increased guarantee to a certain segment of citizens, the elderly. The aim of this article is based on the safe guarantee of a social and cultural activity of the elderly.

The rights of persons with disabilities is another objective of the EU which has been transposed by the Charter, through art. 26 (which states that: “The Union recognizes and respects the right of persons with disabilities to benefit from measures to ensure their autonomy, social and professional integration and participation in Community life”). The establishment of an environment that ensures people with disabilities, the right to work and the right to social life, demonstrates a keen interest in the obligations of the EU.

The protection of disadvantaged persons is strengthened by the intervention of art. 21 paragraph (1) of the Charter (which states that: “Discrimination of any kind is prohibited, based on reasons such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political opinions or of any other nature, membership in a national minority, wealth, birth, disability, age or sexual orientation”), which greatly widens the scope of the criteria recording genetic characteristics, disability, age or sexual orientation. Promoting equality in carrying out any activities and eliminating discrimination on the grounds mentioned in art. 21 paragraph (2), confers from a legal point of view the consecration of equality and the promotion of a social environment favourable to all persons.

A final point that reviews a number of legal issues regarding new rights is based on the promotion of the rights of national minorities and cultural, linguistic and religious diversity. The promotion of the rights of national minorities and of cultural and linguistic and religious diversity is innovatively underlined by the provisions of art. 21 paragraph (1), art. 22 and par. 3 of the Preamble of the Charter. They complement the policies enacted by the EU through Directive 2000/43 / EC and the jurisprudence of the CJEU (Case C-281/98, Angonese).

III. New rights result of scientific and social evolution

The innovative aspect of the Charter is precisely the insertion of new rights that have been needed due to economic development and social, scientific or technological progress at EU level. The key goal is to align EU law with the needs of social reality.

These rights are those that refer to the protection of personal data, art. 8 of the Charter, rights that have emerged as a result of the development

of information technology; recognition of the freedom of arts and sciences, art. 13 of the Charter, the right to good administration, art. 41 of the Charter, the right to integrity of the person in the fields of medicine and biology, by expressly prohibiting the practices of eugenics or cloning of human beings for the purpose of reproduction, art. 3 of the Charter; the right to marriage and to start a family, without it containing elements that express the sex of persons wishing to start a family, art. 9 of the Charter; the right to environmental protection, art. 37 of the Charter.

With regard to the rights presented, we consider that of a major importance is the right stipulated in art. 3 of the Charter, as it is provided for in no other EU document or in the European Convention on Human Rights at the time of its ratification. Taking into account that the source of inspiration of the Charter is the European Convention for the Protection of Human Rights and Dignity of the Human Being from the Applications of Biology and Medicine, it can be stated that the right stipulated by Article 3 paragraph (2), letter d) prohibits human cloning, from the EU's perspective, it leaves to the community states the decision on how to regulate the different cloning.

In the same context, the right to start a family can be spotted, art. 9 of the Charter, this article contains an element of novelty, although it takes over the provisions of Article 12 of the European Convention on Human Rights, the legislator did not clearly specify the prohibition or not of same-sex marriages. Consequently, the article does not prohibit but does not guarantee same-sex marriage, while art. 12 of the European Convention on Human Rights expressly stipulates the phrase "men and women have the right to marry".

The freedom afforded by the Charter in the sense of using a broader formula, leaves the exercise of this right open to all persons regardless of sex, and as such currently in some EU Member States the possibility of concluding a same-sex marriage is recognized by law. As a result, the EU has left it to states to decide whether or not to recognize same-sex marriage.

In conclusion, we can say that in relation to the provisions of the European Convention on Human Rights, the provisions of the Charter bring additional, innovative elements that encourage novelty.

Thus, the European Convention on Human Rights essentially contains civil and political rights, while the Charter contains civil and political rights but also social, economic and cultural rights.

The Charter contains state-of-the-art rights that protect issues of major importance, such as the right to environmental protection, while the European Convention on Human Rights contains classical rights.

The Charter has an extensive content, as it contains rights that could not be provided for at the time of the adoption of the European Convention on Human Rights, such as the prohibition of human cloning or the protection of personal data.

The charter suggests a general extension of some rights, allowing decisions or regulations to be made at EU state level, such as the right to marry.

The Charter contains express provisions that provide guarantees for disadvantaged people, the protection of children, women, the elderly, people with disabilities or national minorities, while the ODE Convention provides only civil rights without identifying persons in any context. In this respect, we consider that the arguments regarding the attribute of innovative document in the context of EU documents, with similar content are eloquent regarding the Charter.

VI. Conclusions

Starting from the differences that arise between the European Convention on Human Rights and the Charter, in the legal literature (Anderson & Murphy, 2011, pp. 1-20), we reinforce the assertions that the provisions of the Charter may seem more demanding.

The Charter includes rights not found in the European Convention on Human Rights. The Charter may provide much wider protection, but a considerable attribute is given by the fact that this document allows in its excess to leave to the discretion of the States the manner of implementing the regulations supported.

Considering the content and the wide regulatory area of the Charter but also the provisions of art. 52 (3) of the Charter, which provide that to the extent that the Charter contains rights which correspond to rights guaranteed by the European Convention on Human Rights, their meaning and scope are the same as those provided for in that Convention, without this provision impeding the EU's right to provide greater protection of fundamental rights.

References

- Anderson, D., & Murphy, C. (2011). The Charter of Fundamental Rights: History and prospects in Post-Lisbon Europe. *EUI Working Paper Law*, 8. <https://doi.org/10.2139/ssrn.1953619>
- Council of Europe. (1950). European Convention on Human Rights. <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>

- Council of Europe. (1961). European Social Charter. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035>
- Court of Justice of the European Union (CJEU). (2000, June 06). *Roman Angonese v Cassa di Risparmio di Bolzano SpA*, Case C-281/98. <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61998CJ0281>
- Douglas-Scott, S. (2011). The EU and human rights after the Treaty of Lisbon. *Human Rights Law Review*, 11(4), 645-682. <https://doi.org/10.1093/hrlr/ngr038>
- Dumitrașcu, M. A. (2012). *Dreptul Uniunii Europene și specificitatea acestuia* [European Union Law and its specificity]. Universul Juridic.
- European Court of Human Rights (ECHR). *Ignaccolo-Zenide v Romania*, application no. 31679/96. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58448%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58448%22]})
- European Union. (1989). Community Charter of the Fundamental Social Rights of Workers. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ac10107>
- European Union. (2000). Charter of Fundamental Rights of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>
- Muraru, I., & Tănăsescu, E. S. (2008). *Drept constituțional și instituții politice* [Constitutional law and political institutions] (1st vol.). CH Beck.
- Vrabie, M. (2017). *Protecția juridică a Cartei drepturilor fundamentale a Uniunii Europene* [Judicial protection of the Charter of Fundamental Rights of the European Union]. Universul Juridic.