

## The Charter of Fundamental Rights of the European Union in the Proceedings of the European Parliament.

(Summary)

Gabriele De Angelis  
IFL-FCSH, Universidade Nova

The leading hypothesis of the IFL-CEDIS research project “Post-national Sovereignty: The EU path towards a political identity” consists in the assumption that over the past decades, and especially over the past twenty years, EU institutions have increasingly attempted to further European integration

- 1) by seeking a model of post-national sovereignty that would be acceptable to the member states, and
- 2) by complementing this attempt with forms of legitimation that would make this model acceptable to European citizens.

In keeping with current scholarly assessments, we have identified in a “constitutional patriotism” the marking character of this legitimation. The so-called “constitutional patriotism” is however the theoretical “superstructure” of a much more complex interplay of symbolic, ethical, and institutional components of a political identity. In order to cast more light into the processes that underlie the attempts to build the EU as a political entity *sui generis*, we have enquired into the contributions that different EU institutions are giving to them. What follows is a brief summary of the work we devoted to the European Parliament (EP) (the complete research will be shortly published in print).

The Charter of Fundamental Rights (CFR) is undoubtedly one of the key-devises (and events) that have marked this institutional and ideological enterprise. The attempt to endow the EU with a bill of rights, however it is still to be fully appreciated in its prospective legal consequences, is open to controversy. It seems on the one hand to make a statement as to the ethical nature of the Union, and picks up in this respect on the key-role that EU institutions – and especially the EP – have ascribed to human rights protection as a mark of the European historical experience and therefore of the Union's constitutive function. It seems also on the other hand to aim to captivate the European citizens by establishing at EU level something that resembles national constitutions and conjures up a positive symbolism. Furthermore, it pins down the ethical dimension of the EU and designs a core-set of principles in which all European citizens are expected to recognise their core-beliefs.

These considerations have made it plausible to focus on the activities that the EP has devoted to the Charter. The research has been conducted by means of frame and computerised content analysis.

The data consist in:

- i. The two plenary debates devoted to the CFR before its first version had been

- drafted (14. March 2000) and after it was adopted by the Convention (3. October 2000);
- ii. The reports, draft reports, draft opinions, opinions, and working documents that the Parliamentary Committees have released over the past two legislatures having the CFR as their object (12 documents);
  - iii. The amendments brought forth in the EP plenary sessions with regard to resolutions having the CFR as their object;
  - iv. The EP working papers and resolutions having per object the Charter (3 documents);
  - v. The written and oral questions that MEP have addressed to the Commission or the Council with regard to the Charter.

The EP has devoted two plenary debates to the Charter of Fundamental Rights, both of them in the year 2000. They occur in advance and after the work of the convention in charge of the draft. The first addresses the Charter as a project and bespeaks its political significance and prospective content. The latter, which takes place *ex post factum*, is devoted to the preparation of the Informal CIG of 13-14 October 2000, which took place in Biarritz.

Both debates reflect an entirely different political context. The first is largely devoted to the Charter itself, whereas the latter focuses on the political struggle inflaming EU institutions over the internal balance of power and the institutional reform of the European governance, which was to be re-discussed in preparation of the new Treaties of the Union. It is within this framework that the Charter is discussed at the EP.

Both debates have been analysed in search of:

1. The reasons that MEPs adduce for drafting a CFR (first debate) and how they assess of the results (second debate);
2. The desiderata and suggestions as to, as well as the successive evaluation of, the content of the Charter;
3. The interpretive frames used to describe the EU, qualify its political identity, and characterise its general features, as their relation to the CFR.
4. Additionally, a frequency analysis of both documents has been carried out in order to better highlight the thematic differences and the interconnectedness of the frames.
5. The remaining data have been used to complement points 1-3 and to check for the uses that have been made of the Charter after its adoption (this concerns especially the oral questions – point v.).

A detailed discussion of data and findings will be published in the printed version. The main findings are as follows.

The EP emerges as a locus of “European consensus” among the main parliamentary groups, especially the PPE-DE and the PSE. Beside the known fact that MEPs tend to speak and act independently of national belonging (as S. Hicks has highlighted in the numerous studies he devoted to the EP), such a consensus is also mirrored in the general disposition to stress consensual issues and downplay less-consensual ones.

Controversial points are mentioned, but not put to the centre stage. A case in point concerns social rights. These represent on the one hand the only issue that can genuinely be mapped onto the left-right distinction. On the other hand, despite different assessments of the adequacy of the CFR in this respect on the part of PPE-DE and PSE, neither of both parliamentary groups seems ready to see in them a reason for deep controversy. Thus, the issue is pressed on the attention of the assembly almost exclusively by the members of GUE/NLG.

Instead, consensual issues (such as for instance biotechnology and data protection) receive more attention than their supposed absolute relevance would make seem reasonable, especially if they are compared with topics such as the legal impact of the CFR, its role in giving European citizenship a legal shape, entrenchment of a “European social model”, and the like.

Indeed, data analysis points out the mainly *symbolic* significance that MEPs generally attribute to the CFR. The Charter is intended as a response

- to a lack of legitimacy;
- to a scarce identification with the EU and its institutions on the part of the citizens; and finally
- to an unbalanced political culture after prospective enlargement.

The latter is an important point. It best emerges from statements that indicate in the Charter a reference point for European values and citizenship rights. Noteworthy is that in the proceedings of the EP both aspects – the ethical and the legal – are not so clearly distinguished as we may expect. Instead of being understood as a means to entrench those rights that the MEPs wish to see acknowledged and enforced Europe-wide, the Charter is seen as the Union's “identity card” to be displayed both to prospective members and to the rest of the world, but specially to the first. This intent manifestly goes back to a lack of trust in the respect for the standards of the rule of law and fundamental rights protection in Eastern Europe, and aims to establish equal principles of citizenship among the at the time current and the prospective member states both with respect to national citizens and to residents. The latter point is explicitly highlighted in several speeches.

This ambiguous attitude (European “ethics” without entrenchment) seems to be motivated by a more profound impasse. Several speakers who come to word in the plenary debates reassure the colleagues (both members of their own and of other groups) as to the fact that fundamental rights protection will remain a fundamentally national issue and that the Charter will have no substantial impact on national jurisdictions. This may seem surprising in the light of the widespread insistence on the need to include the CFR into the Treaties and to give it thus a binding character.

In fact, this is not surprising if we consider that the EP's intention is to establish a symbolic tie with the kind of polity that European citizens know from their national institutions. Indeed, the legal entrenchment of fundamental rights and mechanisms of enforcement of a fundamental rights control upon member states would have required

that the EU takes on the characteristics of a state-like entity to which member states would be legally subordinate. For such a step there is evidently no majority either inside the EP or among national governments. Indeed, the CFR was not expected to alter the balance between national and EU jurisdiction or to make any substantial changes in the level and quality of fundamental rights protection in Europe, nor was it expected to prepare the ground for formal entitlements. “Symbolic politics” is the result of such an impasse.

The real issue at stake shows up when it comes to discuss the role of the EP in the concert of EU institutions. The Parliament almost unanimously understands itself as a champion of the “communitarian method”, which it re-frames in terms of inclusive, cooperative politics among a plurality of different, both institutional and non-institutional actors. This kind of politics ought to be carried out by means of a wide network of public consultations for which the MEPs see a promising model in the proceedings of the convention that drafted the Charter. The Parliament receives in this respect explicit support from the Prodi-commission, with which it aligns itself against the pre-eminence of the intergovernmental method of decision-making “behind closed doors”. The reason why this idea of European politics under “communitarian” auspices is particularly stressed in the debates we analysed is to be found in the fact that at the time the new Treaties were discussed and the balance among EU institutions had to be re-shaped. Despite the contingent motives, this model looms large in the imaginary of the MEPs, although this does not imply that its concrete features and possible consequences are fully – or even tentatively – taken into consideration.