



***The Significance of the EU Constitutional Treaty
with Particular Reference to the Charter of Fundamental
Rights***

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“The Significance of the EU Constitutional Treaty
with Particular Reference to the Charter of Fundamental Rights”

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Presentation Outline

1. The Significance of the Constitutional Treaty

1.a. The Legal Nature of the “draft Constitution for Europe”

1.b. Noticeable (Legal) Improvements

1.c. Noteworthy Provisions from a Lawyer’s Perspective

⇒ The Principle of Supremacy

⇒ The Principle of Effectiveness

⇒ *Locus Standi*

⇒ Judicial Review against Acts Adopted by “bodies and agencies of the Union”

⇒ Sanction against Member States

2. The Charter of Fundamental Rights

2.a. Brief Overview

2.b. Arguments against the Incorporation

2.c. Relevance of the Arguments

⇒ An Expansionist Tool?

⇒ A “Federal” Common Standard?

⇒ The Subordination of Individual Rights?

⇒ The Triumph of Market Values?

⇒ An Economic Cost?

1. The Significance of the Constitutional Treaty

1.a. The Legal Nature of the “draft Constitution for Europe”

I will be very brief as far as the legal nature of the EU constitution is concerned.¹

From a formal point of view, the draft Constitution remains a treaty as it must be adopted and amendments ratified by *all* the Member States. However, as far as the substance is concerned, it could be correctly argued that the draft Constitution can be compared to one of a State as it includes some important elements of what is generally defined as a “constitution”.

Ultimately, we find ourselves with a legal mix, a “constitutional treaty”, i.e. a *sui generis* legal instrument for an original and complex institutional structure such as the EU.

1.b. Noticeable Improvements

One may be disappointed or delighted – depending on the point of view – but the draft Constitution certainly does not imply a “Super-State”, a Federal state. As one well-advised commentator put it, “while the plot and the set may look impressive, the play itself is not revolutionary”.²

It certainly does not mean that the draft shall not be praised. From a legal point of view (at least), the Convention has produced several drastic improvements.

First of all, the draft recommends a merger of the Treaties into a “constitutional” text, ending the famous “pillar” structure introduced at Maastricht. According to Article 6, the EU shall have legal personality. The incorporation of the Charter as Part II of the constitution is also a major breakthrough.

Secondly, a better division of Union and Member State competences is proposed. The draft introduces a classification of the Union’s powers and establishes a new and inventive mechanism to ensure compliance with the principle of subsidiarity. Compared to provisions dealing with division of competences in federal constitutions, it shall be said that the draft is at least as clear and quite protective of state competences.

Finally, the draft Constitution positively simplifies the decision-making processes and the Union’s legal instruments. At the present time, the Union has about 15 different legal instruments. The draft foresees a typology of acts limited to six instruments (law, framework law, “regulation” (new!), decision, recommendation and opinion). With the intention to meet the criticism directed against European legislation, of being excessively detailed, the draft also draws a clearer distinction between legislative acts and implementing rules. The foreseen hierarchy of Union acts distinguishes between legislative acts (law and framework law), non-legislative acts (“regulations” and “decisions” by the Council), delegated acts (comitology...) and implementing acts (MS implementing competences exercised the Union...).

¹ See e.g. J.-C. Piris, “Does the European Union have a Constitution? Does it need one?”, Harvard Jean Monnet Working Paper 5/00, available at: www.jeanmonnetprogram.org/papers/00/000501.html.

² K. Nicolaidis, “The New Constitution as European Demoi-cracy?”, The Federal Trust for Education and Research, Online paper 38/03, p. 3, available at: www.fedtrust.co.uk/uploads/constitution/38_03.pdf.

1.c. Noteworthy Provisions from a Lawyer's Perspective³

⇒ The principle of supremacy: Article I-5a (former 10(1)) states explicitly (for the first time) the principle of EC law supremacy. EC/EU law will thus officially become the “supreme law of the land” *where* directly effective Community law should be applied (“...in exercising competences conferred on it...”). Article I-5(a) does not extend the doctrine of primacy but codified what the ECJ had held as long as 1964 in the case of *Costa v. Enel*. One quick remark: the wording “...law of the Member States...” is somewhat ambiguous since it could be taken to mean ordinary law rather than constitutional norms! (see the French version for a clearer statement)

Article I-5(a): Union law

The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.

⇒ The principle of effectiveness: Article 28(1) point 2 is a new provision that underlies the fact that national courts play an important role in the application and enforcement of Union rights. It formalises the pattern of decentralised judicial review favoured by the ECJ in its case law and reflects the principle of effectiveness, i.e. the obligation of Member States to provide the judicial means, including remedies, which are sufficient to ensure effective protection of Community rights.

Article I-28: The Court of Justice of the European Union

1. The Court of Justice shall include the European Court of Justice, the High Court and specialised courts. It shall ensure respect for the law in the interpretation and application of the Constitution.

Member States shall provide rights of appeal sufficient to ensure effective legal protection in the fields covered by Union law.

⇒ *Locus standi*: It is common knowledge that the ECJ has persistently resisted calls to liberalise *locus standi* under Article 230(4). However, in a liberalising move, the draft Constitution authorizes a less restrictive vision. If Article III-270 para. 4 leaves unchanged the current position on *locus standi* in relation to “legislative acts” (individual concern shall be proven), it liberalises to some extent *locus standi* in relation to “regulatory acts”. The notion of regulatory act is nowhere defined (but it appears to mean any other act other than a legislative act). To summarize: individual concern is no longer required when the following conditions are fulfilled: the

³ The author relied on the working paper written by Professor Tridimas, “The European Court of Justice and the Constitution: A Supreme Court for the Union?”, January 2004, available at: <http://papers.ssrn.com>. See also the brilliant synthesis operated by the European Union Committee, House of Lords, *The Future Role of the European Court of Justice*, 6th Report of Session 2003-04.

contested measure is a regulatory act; is of direct concern to the applicant; and does not entail implementing measures (this is to avoid a denial of justice in a *Jégo*-type situation (T-177/01 [2002])).

Article 230(4) TEC

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 and individual concern to the former.

Article III-270 Draft Constitution

4. Any natural or legal person may, under the conditions referred to in paragraph 1 and 2, institute proceedings against an act addressed to that person or which is of direct and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures.

5. Acts setting up bodies, agencies and **offices** of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, agencies or **offices** intended to produce legal effects in relation to them.

⇒ Judicial review against acts adopted by “agencies, bodies **and offices** of the Union”: Article III-270 para. 5 makes it clear that acts of such bodies and agencies which produce legal effects are open to judicial review in accordance with the fundamental principle of judicial protection provided for in Article 47 of the Charter.

⇒ Sanction against Member States: Positively, Article III-267 para. 2 does away with the requirement for the Commission to issue a reasoned opinion before seeking the imposition of pecuniary sanctions. Further, the draft Constitution foresees an expedited procedure for the imposition of sanctions in cases of “non-communication”, namely where a Member State has not taken any measures to implement a Community directive.

Article 226 TEC

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Article 228 TEC

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's judgment

within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 227.

Article III-267 (*draft Constitution*)

1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgment of the Court.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court of Justice of the European Union, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article III-266.

3. When the Commission brings a case before the Court of Justice pursuant to Article III-265 on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a European framework law, it may, when it deems appropriate specify the amount of a lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

The allocated time does not permit to analyse the significant changes in the field of Judicial cooperation in civil and criminal matters (and notably the much debated question of establishing minimum rules relating to mutual admissibility of evidence, the rights of individuals in criminal procedure, etc.) and we shall limit our presentation to the scope and the impact of the Charter as Part II of the Constitution.

2. The Charter of Fundamental Rights

2.a. Brief Overview

Broadly speaking, the Charter does not really create new rights, but crystallizes existing guarantees. The rights provisions are basically a restatement or compilation of existing rights, especially the ones contained in the ECHR.

Yet, “new” fundamental rights have emerged such as the right to a clean environment, bioethical rights, a right to protection of personal data and the rights of the disabled.

It is also important to note that the Charter contains Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider.

Still, the strong relationship with the ECHR is extremely clear (see Article 52(3)). The ECJ shall be deferential to the ECtHR as for the meaning and the scope of the rights “which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms”.

And last but not least, the constitution directly tackles the question of the relationship between the EU and the ECHR: see Article I-7(2).

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Part II.
2. The Union shall accede [*seek accession in 2003*] to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

The dominant view favoured such an outcome as there was “a danger that the Union might go it alone in the field of human rights and create a normative split lip between itself and the Council of Europe – not to mention bring the very future of the Council of Europe into question” (G. Quinn). We will not express our view on the issue but it will be interesting to see how this works in practice (preliminary rulings, etc.).⁴

Finally, it is fair to say that the Charter contains principles and aspirations which are sometimes insufficiently concrete. However, our priority today is not to discuss the necessity, the relevance of a specific Bill of Rights for the EU or to assess the more or less aspirational character of many of the Articles of the Charter (see e.g. the right to placement services, etc.). As I have already mentioned it, my intent is more precisely to evaluate the arguments raised against the scope and the impact of the Charter (with special regard to the “horizontal” clauses) as Part II of the EU draft Constitution.

⁴ See the study carried out within the Council of Europe “of technical and legal issues of a possible EC/EU accession to the ECHR”, 28 June 2002, para. 75 and subs.

2.b. Arguments against the incorporation

Here are some of the most intelligible legal arguments made against the incorporation of the Charter into the constitutional treaty:

- ⇒ Many elements of the Charter are matters for the Member States and have nothing to do with the EU as it has developed up to now – e.g. the death penalty or reproductive cloning.
- ⇒ Second argument, not only the draft Constitution will allow the ECJ to expand its jurisdictional empire but it will in addition enable the ECJ to define a common standard applicable right across the EU, meaning the ECJ will enforce a uniform standard of rights as did the US Supreme Court through the 14th Amendment.
- ⇒ Third argument, Article 52(1) of the Charter (“Subject to the principle of proportionality, limitations may be made only if...”) is so broad that it will allow the subordination of individual rights to the will of the State. In other words, the Charter does not guarantee a higher standard of protection.

More political than legal, some studies often raise (sometimes within the same study, which is for the least contradictory) the two following issues:

- ⇒ The ECJ will once and for all authorize the triumph of market values over fundamental rights, its jurisprudence being usually described as giving priority to commercial expediency over human rights
- ⇒ The binding character of the Charter will have a negative business impact as a consequence of the imposition of new EU obligations (see the “Solidarity” section) on national governments.

2.c. Relevance of the arguments

Let’s turn our attention to the relevance of these arguments

- ⇒ An expansionist tool?

Article II-51(2) provides that “this Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution”. The Article establishes clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity.

According to the Commission’s Citizen guide, “the fact that certain Charter rights concern areas in which the Union has little or no competence to act is not in contradiction to it, given that, although the Union’s *competences* are limited, it must *respect* all fundamental rights wherever it acts and therefore avoid indirect interference also with such fundamental rights on which it would not have the competence to legislate” (see the right to strike, housing assistance, etc.).

Ultimately, the reach of the Charter should not be exaggerated. It is meant essentially, if I dare saying, as PR tool and to guard against the misuse and abuse of (public) power in the design and implementation of EU law (as already provided in the ECJ's case law...), not to supersede national practices. It shall not affect *per se* the allocation/balance of competence between the EU and MS.

⇒ A “federal” common standard?

In relation to the previous argument, one may admit that over the years, the Court has gradually extended its review to include not only acts of the institutions, *but also acts of the Member States when they act under EC law*. It is still a condition, however, for the ECJ to exercise its jurisdiction that the national measures fall “within the scope of Community law”.

We may argue about the uncertain limits of such a concept but it is simply false to affirm that the Charter will enable the ECJ to define a “federal” common standard: An American-style incorporation of “federal” human rights into the “state” legal order has yet to happen and this is quite unlikely.⁵ Indeed, Article II-51(1) stipulates that the provisions of this Charter are addressed to the MS “only when they are implementing Union law”. (according to the “explanations”, this is in full accordance with the ECJ's case law).

Unlike the system in the USA, the Community system for the protection of fundamental rights does not apply generally irrespective of the subject-matter at issue, that is to say irrespective of whether it falls within federal or State competence. Such a degree of coherence could be achieved only if, the MS entrust the ECJ the task performed by the US Supreme Court, that of protecting any individual citizen, on the basis of a “federal” standard against any public authority of any kind and in any area of substantive law. Article II-51(1) plainly excludes such a trend.

Article 51 Scope (*Charter proclaimed in 2000*)

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article II-51 Field of application (2003)

1. The provisions of this Charter are addressed to the institutions, bodies and **agencies** of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers **and respecting the limits of the powers of the**

⁵ See K. Lenaerts, “Respect for Fundamental Rights as a Constitutional Principle of the European Union”, 6 *Columbia Journal of European Law* 1, 2000.

Union as conferred on it in the other Parts of the Constitution.

2. This Charter does not **extend the field of application of Union law beyond the powers of the Union** or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

⇒ The subordination of individual rights?

The main argument here is to say that Article 52(1) will authorize undue limitations on the exercise of fundamental rights. This indicates a profound lack of knowledge. It is enough to mention that the ECHR likewise authorizes limitations on the exercise of rights and freedoms as long as the limitations are provided by law, meet objectives of general interest and are necessary in a democratic society (i.e. proportionality test).

Certainly, the ECHR did not adopt the general “derogation” scheme, but there are no obvious reasons why the ECJ will not strictly interpret limitations on fundamental rights while, at the same time, preserving, as the ECHR, some margin of appreciation for national authorities. In addition, allow me to mention that a general “derogation” clause could be found in the 1948 UDHR (Article 29(2)) and more recently in the Canadian and South African constitutions.

In any case, Article 53 shall be enough of a guarantee that the Charter will not be interpreted as restricting or adversely affecting human rights and fundamental freedoms in comparison to the ECHR or MS’ constitutions.

Article 52 Scope of guaranteed rights (2000)

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article II-52 Scope and interpretation of rights and principles (2003-4)

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States. (added by the ICG in June 2004)

Explanation for the 2003 amendments:

52(4) and (6) make clear that Charter rights will be interpreted “in harmony” with national traditions; 52(5) clarifies the distinction between rights and principles.

Explanation for the last amendment:

It was argued that the “explanations” (prepared by the Praesidium in October 2000 to clarify the provisions of the Charter) shall be used to identify the source of a “right” and its intended effect (an enforceable right, a principle which might be used to guide the interpretation of EU legislation, or merely a statement of political aspiration). The British Government thought that the “explanations” will moderate its use.

Article II-53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States’ constitutions.

⇒ The triumph of market values?

Instead of offering you some abstract defence of the ECJ’s case law, let me mention two examples. First of all, by refusing to grant direct effect to WTO rules, the ECJ preserved the power of the EU institutions to protect societal values over trade.⁶

Secondly, the *Schmidberger* ruling in 2003 (C-112/00) brilliantly demonstrated that the Court takes fundamental rights seriously and that it is ready to override free movement concerns when fundamental rights are at stake.⁷ Faced with a motorway closed by the Austrian authorities in order to allow an environmental group to organise a demonstration on the Brenner motorway, the ECJ rightly analysed it as a measure having equivalent effect to a quantitative restriction. Nonetheless, the Court ruled that was justified the restriction “of the obligations imposed by Community law, even under a fundamental freedom guaranteed by the Treaty such as the free movement of goods”. (§ 74)

⁶ C-149/96, *Portugal v. Council* [1999] ECR I-8395.

⁷ For a more thorough analysis, see Tridimas, *supra* note 3.

It is also of interest to note that the ECJ stressed that the competent authorities had “wide discretion” (when protecting fundamental rights) and applied to national authorities a standard of scrutiny (the criterion of reasonableness) which is usually reserved to the Community institutions themselves. As with the ECHR or the Canadian Supreme Court, the concept of “national margin of appreciation” is taken into consideration by the ECJ (N.B. in the EU context, the margin of appreciation enables MS to protect fundamental rights over “fundamental freedoms”; in the ECHR context, the margin of appreciation enables MS to limit fundamental rights in order to meet objectives of general interest).

In addition, by attributing particular importance to the ECHR and the common constitutional values of the MS as well as the national laws and practices (see Article 52 (4 and 6)), one may easily conclude that there is little to fear of the ECJ’s jurisdiction neither with regard to the exportation of an artificial common standard or the triumph of market values over fundamental rights.

⇒ An economic cost?

I have already mentioned that the Charter essentially reproduces the rights contained in the ECHR but sometimes goes beyond these by including certain economic and social rights. These are mainly drawn from the Council of Europe’s Social Charter, the Community Charter of Fundamental Social Rights of Workers and several EC Directives. The Charter, for example, recognizes the Worker’s right to information and consultation within the undertaking, the right of collective bargaining and action and protects workers against unjustified dismissal (etc.).

As you may know, Britain’s foreign secretary, Jack Straw made a special point of demanding “legal certainty” so that part of the constitutional treaty detailing the citizen’s fundamental rights would not upset the UK’s liberal labour laws.

My first argument would be to say that it is quite shocking to refuse to recognise that economic and social rights are “rights” which shall within limits (see below) be enforceable. Do we really want to emulate the USA (and e.g. its failure to sign the UN Rights of the Child Convention)? The rule of law implies for a State to comply with their international obligations (see especially obligations under CESC) and to implement EC Directives. It is quite irrational to fear the imposition of some kind of “socialist central planning” in Brussels.

In addition, the so-called “aspirational” nature of several rights (e.g. high level of environmental protection) contained in the “Solidarity” section is not something original. Almost all constitutional texts in continental Europe guarantee some “aspirational” economic and social rights. If these rights are not justiciable *per se*, constitutional courts generally apply them as “principles”, as “programmatic rights” to be taken into account when reviewing statutes.⁸ In any case, Article 52(5) was inserted as to clarify the distinction between rights (to be enforceable) and principles (to guide interpretation).

⁸ To compare with the concept of “positive obligation” in the ECtHR’s case law (the effective protection of “classical” fundamental rights requires sometimes a “positive” intervention from the State, see e.g. with regard to Article 10 the decision of the ECtHR, *Özgür Gündem v. Turkey*, 16 March 2000). Regarding

However, the importance of this debate might be overrated as the European Convention rejected the notion of a special procedure for dealing with fundamental rights (like in Germany). In other words, the Constitution does not allow a direct recourse to the ECJ for private individuals who think that any of his Charter rights had been breached. And as we have seen, the rules governing *locus standi* for individuals did not improve fundamentally. Last but not least, I shall repeat that the Charter can only be applied in the context of the rights being present in the substantive EU treaties. For example, the right to strike is excluded in the TEC, meaning that Article II-28 of the Charter cannot be relied upon in the EU context.

The main risk – if you share the UK’s government point of view – is not the justiciability of these economic and social rights but rather that the Charter will in practice influence national policy and limit the freedom of action of Member States even in areas that remain clearly within their competence (a “higher” Union standard will inevitably exert pressure on national governments”).⁹

Conclusion

As a final point, I would like to emphasize that the reading of the Charter and a basic understanding of how fundamental rights have evolved in Europe since WWII should help in the watering down of the criticisms addressed to the Charter as Part II of the EU Constitution. It is legitimate however to express some concerns with regard to the ECJ’s prospective activism.

Yet, the ECJ like any constitutional court in Europe or the US Supreme Court is sensitive to political concerns and social consensus, not mentioning its own credibility in the eyes of national supreme courts and academics or lawyers. Without doubt, the Court of Justice will show considerable self-restraint in the interpretation of the Charter’s horizontal clauses and will not let the fundamental rights “genie” get out of the bottle...

national practice on “aspirational” rights, see the “right to a home” in the French case law where it is denied that such a right encompasses an individual right of enforcement in the courts (instead viewed as an “objectif de valeur constitutionnelle”). See also the right to a clean environment to be included in the French Constitution later this year.

⁹ This is the concern rightly expressed by the House of Lords, *The Future Status of the EU Charter of Fundamental Rights*, Select Committee on the EU, Session 2002-2003, 6th Report, § 99.