

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0332/2002

8 October 2002

REPORT

on the impact of the Charter of Fundamental Rights of the European Union and
its future status
(2002/2139(INI))

Committee on Constitutional Affairs

Rapporteur: Andrew Nicholas Duff

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A RESOLUTION.....	5
MINORITY OPINION.....	12
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET.....	13
OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES.....	17
OPINION OF THE COMMITTEE ON PETITIONS	19

PROCEDURAL PAGE

At the sitting of 5 September 2002, the President of Parliament announced that the Committee on Constitutional Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the impact of the Charter of Fundamental Rights of the European Union and its future status and that the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs, the Committee on Women's Rights and Equal Opportunities, and the Committee on Petitions had been asked for their opinions.

The Committee on Constitutional Affairs had appointed Andrew Nicholas Duff rapporteur at its meeting of 18 June 2002.

The committee considered the draft report at its meetings of 11 September 2002 and 3 October 2002.

At the last meeting it adopted the motion for a resolution by 21 votes to 3, with 0 abstentions.

The following were present for the vote: Giorgio Napolitano, chairman; Ursula Schleicher, vice-chairman; Andrew Nicholas Duff, rapporteur; Teresa Almeida Garrett, Pervenche Berès (for Jean-Maurice Dehousse), Georges Berthu, Jens-Peter Bonde, Elmar Brok (for Jean-Louis Bourlanges), Lone Dybkjær, José María Gil-Robles Gil-Delgado, Gerhard Hager, The Lord Inglewood, Sylvia-Yvonne Kaufmann, Neil MacCormick (for Monica Frassoni), Cecilia Malmström (for Paolo Costa), Luís Marinho, Iñigo Méndez de Vigo, Gérard Onesta, Jacques F. Poos (for Enrique Barón Crespo), Alonso José Puerta (for Armando Cossutta), Reinhard Rack (for Luigi Ciriaco De Mita), Willi Rothley (for Carlos Carnero González), Antonio Tajani, Dimitris Tsatsos and Karl von Wogau (for Giorgos Dimitrakopoulos).

The opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions are attached. The Committee on Employment and Social Affairs decided on 9 July 2002 not to deliver an opinion.

The report was tabled on 8 October 2002.

MOTION FOR A RESOLUTION

European Parliament resolution on the impact of the Charter of Fundamental Rights of the European Union and its future status (2002/2139(INI))

The European Parliament,

- having regard to its resolution on the drafting of a Charter of Fundamental Rights of the European Union,¹
- having regard to its assent to the draft Charter of Fundamental Rights of the European Union,²
- having regard to Rule 163 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Legal Affairs and the Internal Market, the opinion of the Committee on Women's rights and Equal Opportunities and the opinion of the Committee on Petitions (A5-0332/2002),

Whereas:

Legitimacy of the Charter

- A. The Treaty of Maastricht (1992) first made provision for the concept of European Union citizenship and established, in Article 6.2, that the Union should 'respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law'.³ For the next decade progress was made in developing the Union's human rights profile mainly in its external policies, but also in the Copenhagen criteria for enlargement (1993);
- B. In June 1999 the European Council of Cologne agreed to establish a Charter of Fundamental Rights of the Union 'in order to make their overriding importance and relevance more visible to the Union's citizens'. It resolved that once the Charter had been proclaimed 'it will then have to be considered whether and, if so, how the Charter should be integrated into the treaties'. To draft the Charter the European Council convened an ad hoc body (that decided to call itself a Convention) made up of representatives of Heads of State and Government, the President of the European Commission and Members of the European Parliament and national parliaments,
- C. The Convention worked from 17 December 1999 until 2 October 2000 under the chairmanship of Roman Herzog, former Federal President of the Federal Republic of Germany. The European Council developed the mandate of the Convention at its

¹ OJ C 377, 29.12.2000, p. 329

² OJ C 223, 8.8.2001, p. 74

³ The European Court of Justice had already considered fundamental rights to be part of the general principles of Community law at least since 1969 (Stauder v. City of Ulm).

meeting in Tampere in October 1999 and reviewed progress at Feira in June 2000. The Convention worked in a very open manner and consulted widely. Notwithstanding the question of the Charter's ultimate status, it decided, famously, to work 'as if' it were drafting a legally binding juridical text and with the express intention of ensuring legal certainty. The Convention precisely fulfilled its mandate from the European Council, which, in turn, unanimously accepted the draft Charter at Biarritz on 13-14 October 2000;

- D. After having received the affirmation of the European Parliament (14 November) and Commission (6 December), as well as that of several national parliaments, the Charter was solemnly proclaimed by the presidents of the three EU institutions at Nice on 7 December 2000. The Intergovernmental Conference also committed themselves to considering the future status of the Charter in a year's time as one of four specific items of further constitutional reform of the Union to be concluded in a new IGC in 2004;
- E. In the Laeken Declaration of 15 December 2001 the European Council established a constitutional Convention with legitimacy corresponding to that of the Charter Convention, under the chairmanship of Valéry Giscard d'Estaing, former President of the French Republic, to consider, among other things, whether the Charter 'should be included in the basic treaty and ... whether the European Community should accede to the European Convention on Human Rights';
- F. The Convention has set up a working group under the chairmanship of Commissioner Vitorino to deal with the modalities and consequences of the incorporation of the Charter into the Treaty and accession by the EU to the ECHR¹;

Content

- G. The Charter embraces the classical human rights of the ECHR as developed by the jurisprudence of the European Court of Human Rights in Strasbourg. It has a much wider scope, however. First, as befits a catalogue of rights that stem from the competence of the European Union as laid down in the Treaties and as developed by the case law of the European Court of Justice in Luxembourg. Second, importantly, the Charter reaffirms the rights and principles resulting from the constitutional traditions and international treaty obligations common to Member States. Third, the Charter addresses modern scientific and technological developments. Fourth, the Charter fully reflects and respects the European social model;
- H. Like the Bills of Rights common to the constitutions of most Member States, the Charter draws together in a single text a comprehensive catalogue of not only specific rights but also general freedoms, values and principles. In style, form and precision it is a familiar document;
- I. While the Charter was not intended to create new rights, it succeeded in making existing rights more visible. In building a fresh, large consensus around a new formulation of rights, the Charter brings greater clarity and salience to them. It reflects contemporary European norms of good governance with respect to equality and anti-discrimination,

¹ For the mandate of the working group see CONV 72/02, and for a paper on modalities CONV 116/02.

social policy, ecology, civic rights, administration and justice. The rights are indivisible: in Europe, liberty, equality and solidarity hang together;

- J. The Charter is a dynamic document, seeking, as the Preamble has it, to “strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments”. Its purpose is to assist the Union in its task of further developing common values while respecting the diversity of national identities. Its formulation allows for the future development of the *acquis communautaire*;
- K. The Charter, therefore, has a durable quality. Despite its unsettled legal status, it was fully legitimised by the manner of its drafting, and it was designed to last. While no such constitutional document can be perfect, and all such documents must be amendable, to open it up now for revision, especially so early in its life, might reduce its integrity and moral force. Experience of the application of a mandatory Charter is needed before amendment can be contemplated. In any case, the current Convention has not been mandated by the Laeken Declaration to re-write the Charter;
- L. There may nevertheless have to be some technical changes made to the Charter in relation to the 'horizontal clauses' to enable it to be incorporated in the Treaty;

Scope

- M. The Charter does not attribute competence to the Union. On the contrary, it has the effect of limiting the exercise of power by the EU institutions because of their obligation to respect the Charter. The institutions also have the duty within their competence to promote respect for the provisions of the Charter;
- N. The Charter does not limit the competences of Member States under the Treaties. It is not a substitute for the fundamental rights regimes of Member States, but a complement to them;
- O. The Charter is addressed to the institutions and bodies (and agencies) of the European Union and the Member States when and in so far as they implement Union law and policy;
- P. In so far as the Charter postulates a direct relationship between the citizen on the one hand and supranational authority on the other, it will help the Union respect the principle of subsidiarity. The Charter should set the tone for the whole constitutional settlement;

Effect

- Q. Although the Charter is not directly justiciable, its status as a solemn proclamation means that it has already become, as expected, an important reference document. It is respected by the EU institutions and is invoked by both Member States and citizens¹, in particular through the petitions submitted to the European Parliament and the complaints lodged with the European Ombudsman. The Commission determined to regard the Charter as binding upon itself and instituted internal procedures to ensure compliance with its

¹ See for example C-377/98, Netherlands v. Parliament and Council.

provisions.¹ It treats the Charter as a general principle of Community law. In making legislative proposals, the Commission lays claim to have respected the Charter on a systematic basis²;

- R. The Council has not yet chosen to regard the Charter as mandatory, but it has referred expressly to the Charter in four Decisions and in two Resolutions³;
- S. Rule 58 of the European Parliament's Rules of Procedure states that Parliament shall pay particular attention to ensuring that legislative acts are in conformity with the Charter of Fundamental Rights; furthermore, the European Parliament has used the Charter as a template for its annual reviews of the situation as regards fundamental rights in the EU; references to the Charter have appeared frequently in the Parliament's reports and resolutions, as well as in MEPs' questions to the Commission and Council;
- T. Three acts adopted under the codecision procedure have also relied on references to the Charter (access to documents, social exclusion and financial collateral).⁴ Numerous others are pending;
- U. The Ombudsman and the Committee on Petitions have received very many petitions and approaches from citizens citing the Charter, although there are numerous apparent misunderstandings of its scope or level of protection. Nevertheless they have been in the forefront of those who have actively deployed the Charter in the interests of the citizen. They have upheld complaints and used their powers of own initiative over discrimination in the recruitment and employment policies of the EU institutions in respect of age, sex, race, freedom of expression and parental leave. They also apply systematically the Code of Good Administrative Behaviour to seek to give effect to the provisions of the Charter. They consider that the Charter should be binding whenever Community law is being applied. The Committee on Petitions and the European Ombudsman and his network of national ombudsmen could play an important role in promoting and monitoring the implementation of the Charter, and the Ombudsman could be empowered to refer important fundamental rights cases to the Court of Justice;
- V. There have been several attempts to call the Charter in aid of litigation in the European Courts. Advocates-General are making an increased number of references to the Charter in their Opinions, and it has become an important source of guidance for the judges.⁵ The Court of First Instance has decided that the Charter confirms a right to judicial review as a general principle of Community law.⁶ In another case, the same Court, citing the Charter, has sought to widen the access to effective judicial remedy of a party

¹ Commission Communication, *Application de la Charte*, SEC(2001)380/3, 13 March 2001.

² Draft acts in which articles of the Charter are cited cover competition policy, labour conditions, data protection, scientific research, asylum and refugee policy, advertising and sponsorship of tobacco, drug trafficking, parental responsibility and the rights of the child, access to justice, the arrest warrant, disabilities, health protection, racism and xenophobia, and staff regulations;

³ Respectively Decisions on disabilities, Eurojust, combating terrorism and the European arrest warrant, 2001/903/EC; 2002/187/JHA; 2002/475/JHA; 2002/584/JHA and Resolutions on languages and life long learning 2002/C50/01, 2002/C163/01.

⁴ Respectively, Regulation (EC) No. 1049/2001; Decision No. 50/2002/EC; Directive 2002/47/EC.

⁵ See for example the Opinions of Advocate General Tizzano in C-173/99, BECTU and Leger in C-353/99, Hautala.

⁶ T-54/99, Max.mobil.

directly but not individually concerned.¹ The European Court of Human Rights has also begun to make positive references to the Charter²;

- W. Not only the European Parliament and Commission³ but also the Economic and Social Committee and the Committee of the Regions have called for the Charter to become legally binding. This powerful message was recently reinforced by the Convention's Civil Society Forum and Youth Convention;

Consonance with ECHR

- X. Fears the Charter would pose a threat to the credibility of the ECHR and the European Court of Human Rights have not been realised. The jurisdiction of the Strasbourg court provides an external monitoring of and the assertion of minimum standards upon the human rights performance of the 44 states of the Council of Europe. The jurisdiction of the Luxembourg court provides an internal control on and an insistence on a high level of respect for human rights within the European Union's legal space. The significance of the Charter is that it provides for a more extensive rights-based regime within the European Union;
- Y. As has been said repeatedly by both the European Parliament and the Parliamentary Assembly of the Council of Europe, the best means of ensuring coherence between the ECHR and EU human rights law would be for the Union to accede to the former. It is important to remove the anomaly whereby the EU, which enjoys competences attributed by its Member States, is not a high contracting party to the ECHR alongside those same Member States. If it were to sign up to the ECHR, the EU would be subject to the same external control in respect of human rights as that of its . On the one hand, the existence of the Charter makes EU accession to the ECHR neither unnecessary nor irrelevant. Accession is desirable for its own sake whatever the status of the Charter. On the other hand, accession to the ECHR does not render the incorporation of the Charter into the Treaty any less necessary or relevant; considers this accession as a forerunner to other EU accessions to international instruments for the protection of fundamental human rights;
- Z. Even after accession of the EU to the ECHR, the European Court of Justice would remain the court of last instance for Community law. Its relationship with the European Court of Human Rights would be exactly the same as that of national supreme or constitutional courts who recognise the role of the European Court of Human Rights to verify consistency and compatibility with pan-European human rights norms. The European Union, once endowed with international legal personality, would be represented directly at the Court of Human Rights, thereby strengthening the authority and autonomy of both the European Court of Justice and the European Court of Human Rights;
1. Notes that the procedure adopted for the Charter's creation, in conjunction with the already wide use made of it by the institutions, courts and citizens, invests it with great

¹ T-177/01, *Jégo-Quéré*.

² ECHR Application no. 25680/94, Judgment 11 July 2002.

³ COM(2000)0644.

- authority; believes that the Charter's effectiveness would be significantly strengthened if the rights laid down in it were to become enforceable under EU law before the courts;
2. Urges the Convention to enhance legal certainty and end political confusion as to the Charter's scope and level of protection by giving it the status of primary law, thereby making it a central reference point for the Court of Justice and national courts; to this end, stresses that the Charter should be incorporated into the basic law of the European Union as a preamble to the European Constitution;
 3. Warns of the dangers of refusing to make the Charter mandatory upon all the EU institutions, bodies and agencies and on Member States when and in so far as they implement EU law and policy, thereby disappointing the expectations of European citizens;
 4. Maintains that an increased status for the Charter is highly desirable in the context of enlargement because it will serve to enshrine a fundamental rights regime at the heart of the European integration process thereby reassuring old, new and potential Member States alike;
 5. Points out that making the Charter binding will initiate a new phase in the development of EU citizenship and that, in order to protect the citizen from any abuse by the European Union of its enlarged powers, judicial remedies will need to be developed;
 6. Proposes, therefore, that the Convention, in close consultation with the Courts, draws up measures to improve direct access to the Court of First Instance (with a right of appeal to the Court of Justice) to enhance the legal protection of individuals; believes that national courts in the Member States and applicant countries must be made more fully aware of their obligation to deploy the Charter on behalf of the citizen;
 7. Finds it unthinkable to have a modern constitution of the European Union without a binding Bill of Rights, and takes the view that if the Convention drafts a new treaty without the Charter it will fall short of having the constitutional effect which is both necessary and desirable;
 8. Believes that the Charter should be incorporated in the new constitutional treaty without making any change whatever to its provisions;
 9. Notes that the Charter once incorporated should be amendable only according to the most solemn constitutional provisions; insists that any subsequent development of the Charter must be drafted by a new special Convention, to be established at a later stage;
 10. Expects that such a new Convention would be gender-balanced and would work to reinforce the principle of equality between the sexes;
 11. Acknowledges the already good collaboration between the Court of Justice and the European Court of Human Rights; reiterates its support for the opening of accession negotiations by the Union, to become a high contracting party to the ECHR and other international instruments in the field of human rights;

12. Recalls that European Union accession to the ECHR is a complement to and not a substitute for the granting of mandatory status to the Charter under EU law - both actions being necessary and timely;
13. Invites the European Parliamentary delegation to the Convention to submit this resolution as a formal contribution to the Convention;
14. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and applicant countries, the Court of Justice and the European Court of Human Rights.

7 October 2002

MINORITY OPINION

pursuant to Rule 161(3) of the Rules of Procedure
Georges Berthu

The Duff report calls above all for the Charter of Fundamental Rights of the European Union to be incorporated into the treaties and to become mandatory.

At the Nice European Council in December 2000, the Heads of State and Government decided, in view of the numerous difficulties and adverse effects which any 'legalisation' of the Charter would entail, that the document should, for the time being, merely retain the status of a political point of reference. The objections raised on that occasion still apply today. We therefore believe that the Charter's non-mandatory status must be maintained.

The Charter's incorporation into the treaties would mean imposing a single definition of fundamental rights throughout the Union, which would apply in theory only to EU activities, but in practice to all areas. The existing Charter does not even attempt to conceal this since it openly refers to many national competences.

This reform would elevate the fundamental rights competence, hitherto the preserve of national constitutions and very closely associated with each country's history and culture, to EU level. By doing so, it would make definitions uniform and rigid, as well as remote from the people, and would give huge power to the Court of Justice, to the detriment of national democratic systems.

In our opinion, it is the very principle of a uniform Charter which is out of touch with the real situation of an area in which separate nations coexist. This kind of Charter is certainly in keeping with the idea of a constitution, a centralised system, a European state, but totally at odds with Europe seen as an area in which sovereign peoples are able to cooperate freely.

30 September 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Constitutional Affairs

on the impact of the Charter of Fundamental Rights of the European Union and its future status (2002/2139(INI))

Draftsman: Giuseppe Gargani

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Giuseppe Gargani draftsman at its meeting of 11 July 2002.

It considered the draft opinion at its meetings of 9 September 2002 and 30 September 2002.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Giuseppe Gargani, chairman and draftsman; Willi Rothley, vice-chairman; Ioannis Koukiadis, vice-chairman; Luis Berenguer Fuster (for Carlos Candal), Ward Beysen, Michel J.M. Dary, Bert Doorn, Raina A. Mercedes Echerer (for Neil MacCormick), Janelly Fourtou, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Heidi Anneli Hautala, Kurt Lechner, Klaus-Heiner Lehne, Hans-Peter Mayer (for The Lord Inglewood), Manuel Medina Ortega, Angelika Niebler (for Anne-Marie Schaffner), Fernando Pérez Royo (for Maria Berger, pursuant to Rule 153(2)), Marianne L.P. Thyssen, Diana Wallis and Stefano Zappalà.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Paragraph 1

Legal protection of fundamental rights in the European Union system has remained inadequate until now because it is restricted to resolutions of the Court of Justice and national courts within the scope of their respective competences, on the basis of Article 6 of the Treaty on European Union;

Paragraph 2

The Charter of Fundamental Rights forms part of the *acquis communautaire*, in that it expresses those basic rights as they result from the constitutional traditions common to the Member States as general principles of Community law, which could make a substantial contribution to the comparison of the various cultures and peoples involved in the process of European integration and consequently represents a firm starting point for the comparison which must be carried out within the European Convention.

The judicial protection of such rights by the national judicial bodies, first of all, and where appropriate by the European Court of Justice as general principles of Community law is not considered by some of the constitutional courts of the Member States (not all of which have courts of this kind) to be sufficient to enable them to dispense with checking the constitutionality of Community acts as regards respect for fundamental rights;¹

Paragraph 3

It will not be possible fully and adequately to create an area of freedom, security and justice without making the Charter of Fundamental Rights binding and without making the provisions, decisions and acts adopted under the third pillar subject to the same system of judicial control as has been established for those adopted under the first pillar;

Paragraph 4

The Charter of Fundamental Rights does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties, and none of its articles stands in contradiction to the provisions which enshrine and define fundamental rights in the Member States; consequently, making the Charter binding would not present any constitutional problem whatever.

¹ See, inter alia, the famous Solange ruling of the German Constitutional Court in *Entscheidungen des Bundesverfassungsgerichts*, vol. 37, pp. 271 et seq. and the Granital ruling of the Italian Constitutional Court in *Giurisprudenza Costituzionale* 1984, pp. 1098 et seq.

Neither would it prevent the higher level of protection for some fundamental rights afforded by the constitutions of certain Member States from remaining in force, since the Charter deals in minimums rather than maximums and is, moreover, restricted to Union provisions, decisions and acts;

Paragraph 5

Despite the solemn proclamation of the Charter, its current status is uncertain. Its effectiveness will depend on the importance attached to it by the practical case law of the European Court of Justice and its effective application by Parliament – as provided for under Rule 58 of its Rules of Procedure –, by the remaining institutions and by the Member States;

Paragraph 6

Consequently, if the aim is to confer full effectiveness on the Charter of Fundamental Rights, it should be formally incorporated into the European constitution, thereby acquiring the force of primary law.

In this way, the Charter would become an obligatory reference point for the Court of Justice for the purpose of monitoring the actions of the European institutions or Member States, not only when they apply Community law but also when they depart from or decline to apply it;

Paragraph 7

In this connection, the judgment of the Court of Justice of 25 July 2002 in Case C-50/00 P, *Unión Pequeños Agricultores v Council*, is particularly important, as it expressed the view that individuals could challenge a measure of general application before the Court only if that measure was of direct and individual concern to them according to current case law¹ and that, in order to change that situation, it would be necessary to amend the Treaties;

Paragraph 8

To enhance the concept and content of European citizenship, the criterion of individual concern as interpreted in the *Plaumann* case law should be expanded along the lines proposed by the Advocate-General in his conclusions of 21 March 2002 in Case C-50/00 P; after all, compliance with the principle of the rule of law requires a generous interpretation of the criterion of individual concern in cases in which serious breaches of the law are reported;

Paragraph 9

Even if a Charter of Fundamental Rights became part of the Union's primary law, it would be advisable to avoid discrepancies between the case law of the Luxembourg Court and that of the Strasbourg Court; consequently, considers that the necessary steps should be taken to enable the European Union to accede to the European Convention on Human Rights;

¹ See the judgment of 17 July 1963 in Case 25/62 *Plaumann v. Commission*, ECR 195.

Paragraph 10

If the European Union acceded to the European Convention on Human Rights it would be possible to resolve the problem of the relationship between the EU system and the European Convention system as regards the protection of fundamental rights raised by the proceedings pending before the Strasbourg Court in Case No 566720, DSR-Senator Lines v Member States of the EU.

Individual rights could be protected adequately either by application to the Court of Justice or by guaranteeing the right of individual petition to the Court in Strasbourg, provided that domestic and Community remedies had been exhausted, and that it was not necessary to initiate preliminary proceedings between the Court in Luxembourg and the Court in Strasbourg, not least because such proceedings could have the effect of excessively prolonging the main proceedings, thus compromising the right to a fair trial enshrined in the European Convention itself.

2 October 2002

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

for the Committee on Constitutional Affairs

on the impact of the Charter of Fundamental Rights of the European Union and its future status
(2002/2139(INI))

Draftsperson: Joke Swiebel

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Joke Swiebel draftsperson at its meeting of 10 July 2002.

The committee considered the draft opinion at its meetings of 10 September 2002 and 2 October 2002.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Marianne Eriksson, acting chairperson; Jillian Evans, vice-chairperson; María Izquierdo Rojo (for Joke Swiebel), draftsperson; Regina Bastos, Lone Dybkjær, Ilda Figueiredo, Geneviève Fraisse, Rodi Kratsa-Tsagaropoulou, Maria Martens and Miet Smet.

CONCLUSIONS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Shares the view that the Charter should be made mandatory upon the EU institutions, bodies and agencies and on the Member States when and in so far they implement EU law and policy, preferably as an integral part of the new constitutional treaty;
2. Underlines that such a step is especially necessary given the unbalanced way in which equality between the sexes is incorporated in the treaties as they stand now - a much firmer base for equal treatment in the labour market compared to other areas - while the Charter stipulates that equality between men and women must be ensured in all areas;
3. Underlines for the same reason the importance of making the Charter fully justiciable and improving direct access to the Court of First Instance with a view to guaranteeing more effectively the realisation of full sex equality in all spheres of life in Europe;
4. Takes the view that the Charter can not and should not be changed before its incorporation as a legally binding text into the Treaties, but underlines that its contents should be made amendable according to constitutional provisions and preferably by a new Convention;
5. Finds it unthinkable that such a Convention would not comprise a balanced representation of women and men;
6. Recommends that in such a process of revision or amending of the Charter due consideration is given to issues such as (domestic) violence against women and trafficking in women and forced prostitution;
7. Recommends that the principle of gender mainstreaming - as already mentioned in the EC Treaty (art. 3.2) - would also be incorporated in and applied to the (revised) Charter.

16 September 2002

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Constitutional Affairs

on the impact of the Charter of Fundamental Rights of the European Union and its future status
(2002/2139(INI))

Draftsman: Vitaliano Gemelli

PROCEDURE

The Committee on Petitions appointed Vitaliano Gemelli draftsman at its meeting of 10 July 2002.

It considered the draft opinion at its meeting of 11/12 September 2002.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Roy Perry, first vice-chairman and acting chairman; Proinsias De Rossa, second vice-chairman; Astrid Thors, third vice-chairman; Richard A. Balfe, Herbert Bösch, Michael Cashman, Laura González Álvarez, Jean Lambert, Ioannis Marinos, Guido Sacconi, The Earl of Stockton, Christian Ulrik von Boetticher and Stavros Xarchakos.

SHORT JUSTIFICATION

1. The Committee on Petitions welcomed the adoption by the European Council of the Charter of Fundamental Rights of the European Union, seeing it as an important legal instrument for guaranteeing democracy, protecting rights and consolidating a people's Europe concerned about human rights and fundamental freedoms.
2. It is perfectly natural that the committee should accept and declare admissible the growing number of petitions submitted to it by European citizens in this area. It is clear from examining these petitions that European citizens are aware of the importance of a European Union which, like its Member States, is based on the principles of **'the rule of law'** and **'legal certainty'** and that they therefore expect the rights that they enjoy to be better taken into account by the Member States and European institutions, but also by local authorities and actors in civil society.
3. Nevertheless, a more thorough analysis of these petitions reveals that European citizens are unaware of the value and legal scope of the Charter and, in particular, are unsure whether its binding nature entitles them to appeal to the courts as a last resort. On the other hand, they are firmly convinced that, once a petition has been addressed to it, the European Parliament must take the appropriate steps to uphold the rights which have been breached.
4. Your draftsman believes that we must not disappoint the expectations of European citizens and must therefore do our utmost to bring them closer to the European Union. That is why it is vital to resolve this legal grey area and define the value and legal status of the Charter. In doing so, due account must be taken of the subsidiarity principle, while the status of each right recognised in the Charter must be clearly spelled out so that it becomes more than just a proclamation.
5. The Committee on Petitions remains convinced that the Convention will display the legal imagination and political intelligence required to take the above considerations into account, make the necessary adjustments to the Charter when it is incorporated into the future European constitution and provide for an individual right of appeal to the courts. The court concerned could be the European Court of Human Rights, since the Union is already a member of the relevant Convention.
6. The Committee on Petitions welcomes the fact that the European Ombudsman has made active use of the European Charter to protect citizens' interests and has always supported and encouraged him in this course in the interests of sound administrative practice, transparency and bringing the Union closer to its citizens.
7. The Committee on Petitions would like to see the above points explicitly included in the resolution of the Committee on Constitutional Affairs, including reference to its role in this field alongside the Ombudsman, with whom it acts in close cooperation.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Recital U

- U. The Ombudsman **and the Committee on Petitions have** received very many **petitions and** approaches from citizens citing the Charter but apparently misunderstanding its scope or level of protection. Nevertheless **they have** been in the forefront of those who have actively deployed the Charter in the interests of the citizen. **They have** upheld complaints and used **their** powers of own initiative over discrimination in the recruitment and employment policies of the EU institutions in respect of age, sex, race, freedom of expression and parental leave. **They also apply** systematically the Code of Good Administrative Behaviour to seek to give effect to the provisions of the Charter. **They consider** that the Charter should be binding whenever Community law is being applied. **The Committee on Petitions and the European Ombudsman** and his network of national ombudsmen could play an important role in promoting and monitoring the implementation of the Charter, and the Ombudsman could be empowered to refer important fundamental rights cases to the Court of Justice;

Recital Q

- Q. Although the Charter is not directly justiciable, its status as a solemn proclamation means that it has already become, as expected, an important reference document. It is respected by the EU institutions and is invoked by both Member States and citizens¹, **in particular through the petitions submitted to the European Parliament and the complaints lodged with the European Ombudsman.** The Commission determined to regard the Charter as binding upon itself and instituted internal procedures to ensure compliance with its provisions.² It treats the Charter as a general principle of Community law. In making legislative proposals, the Commission lays claim to have respected the Charter on a systematic basis³.

¹ See for example C-377/98, Netherlands v. Parliament and Council.

² Commission Communication, *Application de la Charte*, SEC(2001)380/3, 13 March 2001.

³ Draft acts in which articles of the Charter are cited cover competition policy, labour conditions, data protection, scientific research, asylum and refugee policy, advertising and sponsorship of tobacco, drug trafficking, parental responsibility and the rights of the child, access to justice, the arrest warrant, disabilities, health protection, racism and xenophobia, and staff regulations;