
Convention on the Future of Europe

2nd OMCT Contribution - The Protection of HR within the EU

Summary

OMCT appreciates the political will shown in favour of the **accession of the EU to the ECHR** as well as the proposal of incorporating the Charter of fundamental rights in the future Constitutional Treaty, within the work of the Group II. The Charter will thereby become a legally binding text having a constitutional value. In order to eliminate any judicial obstacle for the accession to the ECHR, we suggest an amendment of the art. 303 of the TCE, establishing an expressed competence of the EU to access the ECHR. Furthermore, both the integration of the charter in the Constitutional treaty and the accession of the EU to the ECHR should be considered as being complementary.

On the other hand, OMCT maintains that the new **"drafting adjustments"** proposed by the Working group II and in particular the new wording of the **horizontal clauses** -art. 51, 52, 53 and 54- are to be considered as substantial modifications restraining the content of the Charter, and engender confusion in interpreting the Charter. That being contrary to the original mandate of the Laecken Declaration establishing that the Convention does not have any competence to change the content of the Charter. Not only the new proposals of the Working group II do imply a substantial modification of the Charter, but these modifications do also restrict the content of the Charter. The proposal of the Convention of adopting an **"Explanatory Protocol"** for the interpretation of the horizontal articles shows that the drafting adjustments have the only effect of triggering confusion vis-à-vis the different judicial actors. For these reasons, OMCT urges therefore the Convention to reject in toto the "drafting adjustments" and consequently the "Explanatory Protocol".

OMCT is in favour of a **direct integration of the whole text of the Charter** in the future constitutional treaty as well as of the integration of the Preamble of the Charter as the general Preamble of the constitutional treaty. The Charter would thereby become much more visible and accessible to the European citizens.

OMCT believes that a clause establishing a specific **mechanism of revision of the Charter**, which should guarantee transparency and the involvement of the civil society, should be foreseen. Moreover, we propose the introduction of a non-regression clause, aiming at preserving in the future the *acquis* of the Charter against any restriction of both its content and its effectiveness.

Once the constitutional treaty will come into force, all the provisions of the Charter will become substantial rights. OMCT calls in this respect for the **improvement of the judicial remedies** (art. 230), enabling the individuals to have a direct access to the Court of Luxembourg. The preconditions to access the Court should be also extended, in the sense that the individuals should be involved *"directly or individually"*. By making the access mechanism to the Court more flexible, both the **credibility** and the **effectiveness** of the Charter within the EU would be strengthened.

In order to ensure a full and coherent protection of the fundamental rights, it would be also necessary to extend the control of the Court to all acts adopted in the framework of **Justice and Home Affairs** (art.234).

Finally, OMCT denounces the abandon of any initiative concerning the insertion of the **Social Charter** in the Constitutional treaty.

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