European Parliament committee on Petitions (PETI) public hearing

Taking Citizens' concerns seriously: broadening the scope of the EU Charter on Fundamental Rights (Article 51)?

23 February 2016

Report by Annica Ryngbeck, Policy & Advocacy Adviser, Social Platform

Citizens have legitimate expectations that their fundamental rights will be protected by the European Union (EU). It is therefore hard to explain to them why the Charter of Fundamental Rights (henceforth 'the Charter') does not always apply and how it interacts with national laws, stated Professor Eleanor Spaventa University of Durham). The committee on Petitions's study on the interpretation of Article 51 of the Charter shows a lack of enforceability of the Charter. Ms Spaventa argued that protecting fundamental rights should be an aim in itself for the EU. The EU and the European Court of Justice (ECJ) should revisit their stance and take a proactive and courageous approach, and they should not presume Member States respect fundamental rights. Professor Spaventa examined the interpretation of ECJ case law and its different applications: *expansive* in terms of e.g. the internal market, *limited* such as in the case of asylum, and a *lack of* application in cases of citizenship. The reason why the ECJ does not examine whether Member States uphold fundamental rights is because there is an unspoken principle of assuming that they can be trusted to respecting them as this was one of the requirements for becoming a member of the EU in the first place. This principle applies even if there are mechanisms to address this in the Treaty on European Union (TEU), such as Article 7 that allows the EU to act when a Member State seriously breaches Article 2, which states that one of the Union's founding values is to respect human rights. However, Article 7 is considered a 'nuclear bomb' and has never been activated; one explanation often given for this is that Member States are afraid that if they evoke it against one state, it will be used against them at another time.

Opening up a revision of Article 51 of the Charter in the current climate political climate could do more damage than good, said Professor Elise Muir (University of Maastricht). Deleting Article 51 in the Charter would require Article 6 (TEU) to also be modified as they complement each other. Professor Eleanor Sharpston from the ECJ outlined arguments for and against revising the Charter so that it also applies regardless of when there is no EU law. Revising the Article would enable people in Europe to evoke their rights without the need to identify EU law relevant to their situation. The Charter might further protect rights not covered by national law or the ECJ. The ECJ could also provide additional protection to national courts and the European Court of Human Rights (ECHR). Member States against a revision of the Article might argue that they do not want the application of the Charter to conflict with their national powers, and that the structure of the ECJ is adequate to protect fundamental rights. The Charter was never intended to be an independent document. Consequently, making it a free-standing source of fundamental rights would lead to a more federal EU.

If the European Commission would promote a bold interpretation of the Charter it is more likely that the ECJ will dare to apply the same approach, argued András Jakab (Max Planck Institute for Comparative Public law and International law). Mr Jakab implied that such correlation can be seen in other matters where the Commission has taken a stand. If nothing is done to tackle the narrow interpretation of the Charter, we will see fundamental rights eroding further in the EU. Professor Jean Paul Jacqué argued that the ECJ is not a court of fundamental rights - this is the function of the ECHR. The ECJ assesses EU law in comparison with national law and gives general interpretations. Furthermore, Professor Jacqué (University of Strasbourg and College of Europe) claimed that mutual trust between Member States is constitutional and necessary for the Union, yet it is being jeopardised by the refugee crisis. Professor Sharpston

explained that the ECJ only reflects cases brought before the court, and no other aspects of the Charter. The Court neither has an agenda nor a legislative programme. If some Member States believe the court goes too far and the European Parliament believes that it is taking too restrictive an approach, it might be doing just fine, said Professor Sharpston.

The EU is a human rights organisation and the European Court of Justice is a human rights court because rights are embedded in the rule of law system, said Gabriel Toggenburg from the EU Agency for Fundamental Rights (FRA). Many actors find the scope of the Charter frustrating; perhaps it is the fact that when reading the Charter we get the impression that rights always apply to us, and not until we reach Article 51 do we realise it does not. Ms Toggenburg ended on a positive note by saying that we should focus on the new dynamic of more and more national courts using the Charter as source of inspiration for their own legal systems. FRA has developed a project called CLARITY to provide people in Europe with assistance in terms of complaints, legal matters and rights information.

The European Commission responded with a standard intervention, delivered many times before. Georgia Georgiadou informed participants about the Commission's activities, such as the 2010 strategy for the effective implementation of the Charter to ensure compliance through fundamental rights impact assessments and check-lists. In 2015 the Commission reviewed more than 500 initiatives and it carried out internal training programmes for its staff in policy and law so that they are better able to make assessments. The Commission also facilitates the exchange of good practices between Member States.

The European Parliament is drafting a report on establishing a mechanism on democracy, the rule of law and fundamental rights in the EU. The report is foreseen to be voted on before the summer in the European Parliament's committee on Civil Liberties, Justice and Home Affairs.