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EUROPEAN PARLIAMENT

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Report

drawn up on behalf of the Legal Affairs Committee

on the report of the Commission of the European Communities on the protection
of fundamental rights

Rapporteur: Mr L. JOZEAU-MARIGNE

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PE 43.967/fin.

By letter of 12 February 1976, the Deputy Secretary-General of the Commission of the European Communities forwarded to the European Parliament a Commission report on the protection of fundamental rights (COM(76) 37 final), published in the Bulletin of the European Communities, Supplement No. 5/75.

This report is a sequel to the resolution adopted by Parliament on 4 April 1973 on the basis of the report (Doc. 297/72) drawn up by Mr Jozeau-Marigné on behalf of the Legal Affairs Committee, on the motion for a resolution (Doc. 103/71) tabled by Mr Lautenschlager on behalf of the Socialist Group on the protection of the fundamental rights of Member States' citizens when Community law is drafted.

At its meeting of 9 March 1976, the Legal Affairs Committee confirmed the appointment of Mr Jozeau-Marigné as rapporteur.

The Legal Affairs Committee examined the report of the Commission of the European Communities at its meeting of 30 April 1976.

At its meetings of 23 June and 21 September 1976 the Legal Affairs Committee considered the present report. At its meeting of 21 September 1976 it unanimously adopted the motion for a resolution and explanatory statement.

Present: Sir Derek Walker-Smith, chairman; Mr Jozeau-Marigné, vice-chairman and rapporteur; Mr Brugger, vice-chairman; Lord Ardwick, Mr Bouquerel, Mr Calewaert, Mr De Keersmaecker, Mr De Sanctis, Mr Espersen, Mrs Ewing, Sir Geoffrey de Freitas, Mr Krieg, Mr Santer, Mr Shaw and Mr Schmidt.

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the report of the Commission of the European Communities on the protection of fundamental rights

The European Parliament,

- having regard to its resolutions of 4 April 1973¹, 10 July 1975² and 15 June 1976³,
- having regard to the Commission's report on the protection of fundamental rights (COM(76) 37 final)⁴,
- having regard to the report (Doc.321/76) of the Legal Affairs Committee,

as regards the report of the Commission of the European Communities

1. Welcomes the submission by the Commission of the Communities of the report requested by Parliament on how the former intends in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States;
2. Commends the quality of the Commission's contribution towards upholding due respect for fundamental rights in the Community order both in the exercise of its power to take decisions and submit proposals and in its role of guardian of the Treaties;

as regards recent trends in the protection of fundamental rights in the Community's legal order

3. Recalls that the Court of Justice, in a recent judgment⁵, referred expressly to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and had stated⁶ some months previously that it could not uphold measures which were incompatible with fundamental rights recognised and protected by the Constitutions of the Member States;

¹OJ No. C 26, 30.4.1973, p. 8

²OJ No. C 179, 6-8.8.1975, p. 30, point 12

³OJ No. C 159, 12.7.1976, p.13

⁴Published in the Bulletin of the European Communities, Supplement No. 5/76

⁵ECR 28.10.1975 (Rutili vs Minister for the Interior, Case 36/75 (1975), p.1219))

⁶ECR 17.5.1974 (Nold, Case 4/73, (1974) p. 507)

4. Appreciates the improvement in existing legal channels which widens access to the Community Court for individuals and contributes to a better protection of their rights;
5. Notes, therefore, in view of the development of Community jurisprudence concerned with the protection of fundamental rights, that the protection of these rights is now very clearly guaranteed by the Community Court and that the level of legal security thus achieved at present in this essential sphere is certainly - in the circumstances - at least as high as that which would be provided by the adoption of a charter of fundamental rights;

as regards the protection of fundamental rights within the context of the future European Union

6. Considers, with the Commission, that the idea of a **charter of the fundamental rights of Community citizens** retains its full validity in the context of the European Union, whatever form such Union should take;
7. Recalls that, in accordance with the traditions of all Member States, the establishment of such a catalogue should predominantly be carried out by parliamentary representatives of the peoples of the Member States of the European Union;

as regards the proposal contained in the Commission's report

8. Shares the opinion expressed by the Commission¹ that a solemn common declaration by the three political institutions of the Community, Parliament, Council and Commission, confirming the principle of respect for the fundamental rights in the Community, would serve as a reply to criticisms of the exclusively judicial character of the present system;
9. Accordingly urges its President, in conjunction with its Legal Affairs Committee, to take every possible step to encourage the Council and the Commission to adopt such a declaration;

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10. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities and, for information, to the **Governments and Parliaments** of the Member States.

¹ COM(76) 37 final, paragraph 38

EXPLANATORY STATEMENTI - General considerations

1. This report has been drawn up by request of the European Parliament following the latter's adoption of the resolution contained in the report submitted on behalf of the Committee on Legal Affairs by the present rapporteur (Doc. 297/72).

Your committee has noted the reasons given for the delay incurred by the Commission in drawing up its report.

2. Your committee notes that the time which has passed since Parliament's vote on the resolution concerning the protection of fundamental rights of Member States' citizens when Community Law is drafted, in April 1973, has been marked by the evolution of case law and action by the Commission of the Communities which is recounted in great detail in the latter's report; during the same period a large number of written and oral questions (see Commission Report, paragraph 16) were put by Members of Parliament; finally, on the basis of the report (Doc. 390/75) presented by Mr Rivierez on behalf of the Legal Affairs Committee, Parliament adopted an important resolution (see Annex III) recalling the place occupied in the structure of the Community by the principles on which the fundamental rights are founded.

3. Your committee considers that the report presented by the Commission of the Communities constitutes a most exact synthesis of the present stage of the problem of defining and protecting fundamental rights. Indeed in this report the Commission presents what must be seen as a positive assessment of the action which it has pursued in this field; your committee believes that the report responds entirely to the concern expressed by Parliament in adopting the resolution contained in its 1972 report (Doc. 297/72).

The programmes and objectives set out in Part D of the Commission's report, to which your rapporteur refers the reader, should be supported without reserve by the Parliament since they fall within a sphere where the two institutions have always held identical views.

4. In these circumstances your committee believes it should stress the proposal contained in paragraph 38 of the Commission's report, designed to ensure that fundamental rights are protected at the highest possible level¹, in the light of the particularly fruitful evolution of the case law of the Court of Justice of the European Communities in this field.

¹ See COM(76) 37 final, paragraphs 27-29

5. Before taking up a position on the principle embodied in this proposal and the procedure for its implementation (see III and IV below) it will simply be necessary to recall briefly the evolution of case law referred to in the previous paragraph.

II - Development of case law of the Court of Justice of the European Communities - its bearing on the present situation and future developments.

6. It is possible to sum up the evolution of case law very briefly by quoting the following judgments:

- 1969 - STAUDER judgment

The Court of Justice recognizes that Community law must guarantee protection of fundamental rights.

- 1970 - INTERNATIONALE HANDELSGESELLSCHAFT judgment

The Court of Justice declares that the protection of fundamental rights must be inspired by the constitutional traditions common to the Member States.

- 1974 - NOLD judgment

The Court of Justice declares that international treaties for the protection of human rights can supply guidelines which should be followed within the framework of Community law.

- 1975 - RUTILI judgment

The Court of Justice expressly refers to the Convention for the Protection of Human Rights and Fundamental Freedoms.

7. In order to appreciate fully the development of case European Court law, which appears to be a very positive one with regard to the definition and protection of fundamental rights, a comparison should be made between certain passages from the NOLD judgment¹ and one of the grounds given in the RUTILI² case.

¹ NOLD - E.C.R. 1974/4, page 507

² RUTILI - E.C.R. 1975/7, page 1232

(a) NOLD judgment

'As the Court has already stated, fundamental rights form an integral part of the general principle of law, the observance of which it ensures

In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States and it cannot there uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States.

Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.

The submissions of the applicant must be examined in the light of these principles.'

(b) RUTILI judgment

'Taken as a whole, these limitations placed on the powers of Member States in respect of control of aliens are the specific manifestations of the more general principle, enshrined in Articles 8, 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all the Member States, and in Article 2 of Protocol No. 4 of the same convention, signed in Strasbourg on 16 September 1963, which provide, in identical terms, that no restrictions in the interests of national security or public safety shall be based on the rights secured by the above-quoted articles, other than such as are necessary for the protection of those interests 'in a democratic society'.

8. The European Parliament has already noted the jurisprudential situation arising from the NOLD and RUTILI judgments in adopting the resolution contained in the report by Mr Rivierez (Doc. 390/75) and in particular point 2 which reads as follows:

(The European Parliament)

'Notes that the Court of Justice of the European Communities has ruled that the fundamental rights are an integral part of the general principles of law, the observance of which is ensured by that Court, drawing inspiration both from the constitutional traditions common to the Member States and from international instruments, in particular the European Convention on Human Rights¹, for the protection of human rights with which the Member States have cooperated or to which they have acceded;'

¹ The European Parliament adopted an amendment (PE 42.871) tabled by Mr Rivierez, replacing the words 'such as' by 'in particular' in the text adopted by the Legal Affairs Committee on 21 October 1975 to take account of the change in jurisprudence arising from the Rutili judgment. (28 October 1975)

9. Since this judgment, the objection sometimes made previously to the system of protection of fundamental rights in the Community order based on an exclusively praetorian definition of these rights, loses much of its force in as far as the Court of Justice now refers to a written source of law, viz, the Convention for the Protection of Human Rights and Fundamental Freedoms, which has now been ratified by all the Member States of the Communities.

III - The principle of a common declaration by the three political institutions of the Community

10. The adoption of a 'Declaration of Rights' has frequently been suggested, particularly in connection with European Union (See Annex 1); however, it does not seem advisable to await the drafting of the constituent act of the Union before regulating these problems; this is why the Commission has formulated a proposal which the Legal Affairs Committee considers a fruitful one, viz.' to confirm, by a solemn common declaration of the three political institutions of the Community (Parliament, Council and Commission), respect for fundamental rights in the Community'.

11. This proposal should result virtually immediately in guaranteeing at the highest possible level the rights of citizens of Member States of the Community with regard to acts of the institutions of the Community.

Your committee has recorded its agreement with the fact that the common declaration proposed would endow the respect of fundamental rights by the Community institutions, as confirmed and guaranteed by the jurisprudence of the European Court, with the political ratification which should then answer the reservations of critics of the exclusively judicial i.e. exclusively jurisprudential, character of the present system.

IV - Observations on the procedure to be followed:

12. The Legal Affairs Committee has nevertheless noted the sui generis character of this procedure for which the only precedent is the joint declaration of the European Parliament, the Council and Commission of 4 March 1975 instituting a conciliation procedure¹.

We know that the preparatory work for the adoption of this latter joint declaration lasted almost two years (see report by Mr Spénale, Doc 483/74 - Ann. I, pp. 17 - 23): It was apparently the result of a compromise negotiated over a long period of time. The Legal Affairs Committee shares in principle the opinion expressed by the Commission² that 'such a declaration would have to be adopted without giving rise

¹OJ C 89, 22.4.1975, page 1

²See paragraph 38, second sub-paragraph

to long discussions'. It is indeed true that if there were not to be 'immediate agreement between the Institutions involved on the declaration such an attempt would be no use and even dangerous. It might create doubts - not justified - as to the credibility of the Community institutions in the field of fundamental rights'.

ANNEX I

Review of the positions taken - in their various reports on European Union - by the Community Institutions and by Mr Tindemans on the advisability of drawing up a catalogue of fundamental rights

I - THE PARLIAMENT

(Point 12 of the Resolution on European Union adopted on 10 July 1975)¹

The European Parliament

'Hopes that, with a view to giving the peoples of the Community a sense of common destiny, a 'Charter of the rights of the peoples of the European Community' will be drawn up and that practical measures capable of contributing to the development of a European Community consciousness, which have been requested for some time, will be adopted'.

Rapporteur's comments:

In the context of European Union, Parliament thus declared itself in favour of a charter of rights; however, for the present, by adopting on 12 May 1976 the motion for a resolution contained in Mr Rivierez' report (Doc. 390/75), Parliament has confirmed the views published in my report (Doc. 297/72) on the protection of the fundamental rights of Member States' citizens when Community law is drafted. As we know, Parliament adopted the view that a praetorian (pragmatic) definition and guarantee represented the most realistic approach.

II - THE COURT OF JUSTICE

(On 11 July 1974, the Court of Justice published its proposals on European Union; as regards the topic under consideration² the Court's position is expressed as follows)

¹OJ No. C 179, 6.8.1975, p. 30

²Section I 'The requirements of a genuine rule of law'
{ C - Protection of the rights of the individual
Paragraph (2) - see Supplement 9/75 to EC Bulletin, p.18

'The problem posed by the safeguard of fundamental rights has two aspects. Firstly, as regards the definition of such rights, it may be enough if the states recognize, in a general formula, the need to safeguard fundamental personal rights in the construction and objectives of the European Union. As to the way in which such rights are safeguarded, the institutions should be expressly required to respect them in the exercise of their powers'.

III -THE COMMISSION

(a) (Report¹ on European Union - 25 June 1975 paragraph 83)

'Although in the Europe of the Nine there is a general consensus on the 'traditional' fundamental rights of the individual - civil and political - this is not entirely the case with the rights of 'groups of individuals' (for example the status of foreigners) and with 'economic and social' rights. The indications offered by international law are far from consistent.

It would seem, therefore, that the most suitable approach, offering the best assurances, would be to incorporate a list of specified rights in the basic act on which the Union will rest.

Another, but much more limited, possibility would be simply to include a general obligation to respect human rights and fundamental liberties. This idea, which is the one the Court would prefer, would ensure the development of a structure of judgments, but it would scarcely assist in the exercise of economic and social rights, where implementing measures of a legal nature are necessary.

A mere reference to the provisions of the European Convention for the Protection of Human rights is also a possibility, but it would not cover economic and social rights and would be difficult to apply in practice'.

¹ Supplement 5/75 to EC Bulletin, p. 26

Rapporteur's comments:

It should be noted in this respect that since the Court of Justice of the Communities has exclusive jurisdiction in determining the legal validity of acts by Community bodies, the Community would not be able to submit itself to the guarantee procedures instituted under the European Convention for the Protection of Human Rights (See Teitgen - Report on the Fourth International Colloquium on the European Human Rights Convention - Rome, 5-8 November 1975 - p. 11).

(b) (Report¹ on the Protection of Fundamental Rights - 4 February 1976 COM(76) 37 final).

See, in particular, paragraphs 32 - 38 on the methods of safeguarding the protection of fundamental rights at institutional level.

IV - TINDEMANS REPORT²

(29 December 1975 - Chapter IV - A citizen's Europe -

(A) Protection of rights).

'The gradual increase in the powers of the European institutions which will make itself felt while the Union is being built up will make it imperative to ensure the rights and fundamental freedoms, including economic and social rights, are both recognized and protected.

In this the Union will find confirmation of its political objectives.

I propose that the European Council should instruct the institutions to propose how best to set about this recognition and protection. The latter must at all events mean that individuals will have the right of direct appeal to the Court of Justice against an act of an institution in violation of these fundamental rights'.

¹ Supplement 5/76 to EC Bulletin

² Supplement 1/76, to EC Bulletin p. 27

ANNEX II

Resolution ¹ adopted by the European Parliament
on 4 April 1973 concerning the protection of the
fundamental rights of Member States' citizens
when Community law is drafted

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Lautenschlager on behalf of the Socialist Group (Doc. 103/71);
 - having regard to the report of the Legal Affairs Committee (Doc. 297/72);
1. Invites the Commission of the European Communities when drafting regulations, directives and decisions, to prevent conflicts from arising with national constitutional law and to examine in particular how the fundamental rights of Member States' citizens may be safeguarded;
 2. Invites the Commission, furthermore, to submit to it a report as to how it intends, in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States;
 3. Stresses the need to make the European Court more widely accessible to the individual citizen;
 4. Instructs its President to forward this resolution and the report of its Committee to the Council and Commission of the European Communities.

¹ OJ No C26, 30.4.1973, p. 7

Resolution¹ adopted by the European Parliament on 15 June 1976 on the primacy of Community law and the protection of fundamental rights

The European Parliament,

- having regard to the Treaty establishing the European Economic Community and in particular Articles 5, 164, 169, 173 and 189 thereof,
- having regard to the European Convention for the Protection of Human Rights of 4 November 1950 and the Additional Protocol of 20 March 1952, which have been ratified by all the European Community Member States,
- having regard to the decision handed down on 29 May 1974 by the Federal Constitutional Court of the Federal Republic of Germany²,
- recalling its resolutions of 22 October 1965³, 10 May 1967⁴ and 4 April 1973⁵,
- considering that the principles on which the fundamental rights guaranteed by the constitutional systems of the Member States rest, constitute a philosophical, political and legal basis common to the Member States of the European Communities,
- considering that - within the Community system - these principles should be safeguarded against any encroachment in the context of the law-making activities of the European Community institutions,

1. Solemnly reaffirms that, in matters governed by the Treaties:

- (a) observance of the primacy of Community law over the domestic law of Member States is a condition for the uniform application of Community law and thus constitutes a guarantee of the equality of the citizens of Community Member States before Community law;
- (b) the Court of Justice of the European Communities is - by the very terms of the Treaty - the sole arbiter of the legality of the Council's and the Commission's acts;

2. Notes that the Court of Justice of the European Communities has ruled that the fundamental rights are an integral part of the general principles of law, the observance of which is ensured by that Court, drawing inspiration both from the constitutional traditions common to the Member States and

¹ OJ No. C 159, 12.7.1976, p.13
² Europarecht (10), p. 150 et seq.
³ OJ No. 187, 9.11.1965, p.2923/65
⁴ OJ No. 103, 2.6.1967, p.2054/67
⁵ OJ No. C 26, 30.4.1973, pp.7 and 8

from international instruments, in particular the European Convention on Human Rights, for the protection of human rights with which the Member States have cooperated or to which they have acceded;

3. Emphasizes that, in its judgment of 14 May 1974¹, the Court of Justice declared that it could not uphold measures incompatible with the fundamental rights recognized and protected by the Constitutions of the Member States;
4. Recalls that under the terms of Article 189 of the Treaty establishing the EEC a Regulation shall have general application and shall be binding in its entirety and directly applicable in all Member States;
5. Finds consequently that the decision of the Federal Constitutional Court of the Federal Republic of Germany, in recognizing the right of national courts to ascertain whether a duly enacted Community Regulation conforms to the national constitutional law on the protection of fundamental rights as defined in the basic law of that State and thus to set themselves up as arbiters of the applicability of a Community Regulation, is contrary to the principle of the independence of the Community legal order and constitutes an infringement of the Treaties;
6. Invites the Commission to keep a close watch over any developments in the situation created by this decision and to ensure by all available means full compliance with the principle of the uniform application of Community law, in accordance with Article 189(2) of the EEC Treaty;
7. Instructs its President to forward this resolution to the Council and the Commission of the European Communities and, for information, to the Governments and Parliaments of the Member States.

¹ Nold v. Commission, 4/73, Recueil de Jurisprudence de la Cour 1974/4, p.508

