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Europe

Fundamental social rights at risk

- IV Online magazine - 2000 - IV326 - December 2000 -

Publication date: Sunday 10 December 2000

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Ask a cook to make you an apple tart with some leeks, some potatoes and a vegetable mill. They'll tell you it's impossible and leave you high and dry with your non-conformist ingredients. But in the European kitchen things don't happen that way and this is very much the case with the EU's Charter of Fundamental Rights. [1]

The European Council in Cologne decided on June 3-4, 1999 that a Charter of Fundamental Rights would be drawn up and proclaimed in December 2000 before the revision of the Treaty of Amsterdam and before the new phase of EU enlargement. The European Council in Tampere (October 15-16, 1999) defined the composition of the body charged with drawing up the Charter, composed of representatives of the heads of state and of government and the President of the European Commission as well as members of the European Parliament and the national parliaments, representatives of the Court of Justice, the social and economic committee and the committee of Regions. From the first meeting (December 17, 1999), the 63 members of this body have met real difficulties in carrying out their task. And with reason, the three following postulates being posed as unavoidable:

- a) The mandate of the European Council in Cologne limits the framework to what is allowed by the Treaty [2] and everyone knows that the Treaty of European Union has some extremely restrictive social clauses. It is drawn up in such a way that nothing can hinder the freedom of circulation of commodities, goods and services and capital.

- b) The secretariat of the Presidium considers that the 1951 European Convention on Human Rights constitutes a minimum standard and that "the Charter cannot mark a regression on the Convention such as it is interpreted by the European Court of Human Rights". [3] However, the Convention only contains civil and political rights. Its editing took place in a climate of passionate debate which ended up with social and cultural rights, incorporated in the UN's 1948 Universal Declaration of Human Rights, being rejected.

- c) Finally, in the area of social rights, the Secretariat of the Presidium stipulates that, "The rights to be guaranteed are not of the same nature. There are rights which are clearly legally enforceable. Others, to be implemented, require action from the Union, action in the framework of which the legislator disposes of significant powers of judgement. (...) A reflexion is then needed in the case of each right so as to determine if it can be legally enforceable or if it can be formulated in such a way that it is. Some rights should be defined as political principles". This demand has been confirmed by the declarations of numerous European parliamentarians: one cannot make promises that one cannot hold to in the future.

The Preamble of a European Constitution

There was a good deal of fuss during the first sessions when some members of the Convention proposed articles guaranteeing social rights as they are drawn up in the national constitutions and legislations. The conservatives and liberals scolded: "The Treaty! Nothing but the Treaty!". The first group then evoked public opinion, arguing that it would not understand. The argument had a certain effect. The members of the Convention have, then, opted for a Solidarity chapter. They sought a compromise by putting together some articles which could create the illusion of the integration of social rights in the Charter, while containing restrictions which would render them ineffective. While the clauses on civil and political rights, protected by the European Convention, start logically with "Each person...", those of the Solidarity chapter begin: "The Union recognizes and respects..." and end "...according to the modalities established by community law and national practices and legislations".

Will the European Council administer this narrowly defined Charter of fundamental rights? For the conservatives and ultraneoliberals who have rejected social rights, the answer is yes, and as quickly as possible. It will be presented to the European Council at Biarritz on October 13 and 14, 2000 and a decision should be taken from its official proclamation by the three European institutions at Nice on December 7-8, 2000. The European Council will commit itself to the fast lane in a process of enlargement with the objective being the extension of the European Union to 27 states. [4]

Parallel to this, there will be the final stage of Economic and Monetary Union for the 12 countries of the Euro zone. From January 1-15, 2002, 50 billion coins and 14 billion bills in Euros will replace the coins and notes in national currencies. In 2003, a first European army will be constituted with a force of 180,000 soldiers. And, as it would be dangerous to conceive of an army and a currency without a state, several heads of state and government believe it is urgent to pose the question of a European Constitution to bring into being a superstate of law superior to the national constitutions. The Charter of Fundamental Rights of the European Union - which was the object of a shoddy compromise but hailed as a great victory by many, institutionalized and proclaimed with great pomp - is called on to become the preamble of the European Constitution.

The result would be a European Constitution, with preeminence of laws, without social constraints; with the right to employment, the right to a minimum income, the right to an equitable wage, housing, freedom and pluralism of media, access to services of general interest not being guaranteed in the European Union and the right to strike remaining unrecognized at the European level. Once more, the European Union demonstrates its capacity to dismantle the social frameworks. The process of drawing up of this Charter can be considered useful if it carried legal guarantee of the social rights contained in the national constitutions and legislations in the context of the development of EU bodies orientated towards the market, the introduction of the single currency and the stifling criteria pact of stability, security, and defence. But nothing of the sort. This process has been exploited on the contrary to encourage the disappearance of social rights of the legal kind. The manner in which the right to employment, income and housing have been twisted is unacceptable:

The right to employment

The authors of the Charter have subtly transformed the right to a job into the right to work in the chapter on Liberty. Each person has the right to work and to exercise a freely chosen or accepted profession (Article 15). Thus, the employers and the states no longer have obligations, except to leave everyone free to work ...or die of hunger!

Rights to minimum income, housing

The text of the Charter is very ambiguous. It says: In order to struggle against social exclusion and poverty, the Union recognizes and respects the right to social aid and to housing aid to assure a dignified existence to all those who do not dispose of sufficient resources, according to the modalities established by Community law and national legislations and practices. This last phrase carries no guarantee when the modalities established by Community law favour the objectives of market liberalization and the drastic convergence criteria for the single currency by obliging states to reduce the generosity (sic) detected in national legislations and practices. As to the beginning of the article, it is equivalent to a rejection of the principle of universality of rights and the acceptance of poverty and exclusion as necessary evils, imprescriptible laws of nature, whereas social rights are, on the contrary, the expression of a human will to free oneself from poverty and exclusion.

The members of the Convention have examined the risks and have then acted in all lucidity. Here is a written contribution from the representative of the French government, Guy Braibant: "To refuse to inscribe an existing right would indicate a willingness to sanciton its disappearance from the legal order". (May 26, 2000)

An instrument of social regression

This Charter is an instrument of social regression, a genetically programmed monster. EU enlargement without social rights will serve the sole interests of those who see central and Eastern Europe as an enormous market waiting to be conquered and a reservoir of cheap highly qualified labour. Since the establishment of Economic and Monetary Union the European machine has been transformed into a steamroller of the systems of social protection and unemployment benefits. The rhythm has accelerated with the process of Luxembourg, Cardiff, Cologne, the broad guidelines of economic policies and the guidelines on employment. The revision of the Treaty takes place in the secrecy of diplomacy, but the documents to which we have access give the impression of a rewriting of the social clauses (article 137) which offers an ultraneoliberal European Commission the possibility of taking the initiative of a directive on the conditions of granting of unemployment benefit. The text prepared by the French Presidency envisages the definition, at the European level, of conditions of collection of payment, limitations on unemployment benefit, and the definition of the availability of the unemployed for the labour market.

The EU is giving itself the ability to confiscate rights to unemployment benefits and minimum income through the Treaty as revised in Nice and the Charter being integrated into the Treaty or becoming the preamble of the future European Constitution. We now face a race against time, not only to defend the rights historically conquered but also to improve living and working conditions, allowing their equalization in the progress towards a democratic and social Europe. [5]

[1] The EU Charter of Fundamental Rights is accessible on the Internet at the following address: <http://db.consilium.eu>.

[2] The mandate of the European Council of Cologne from June 3-4, 1999: this Charter must contain the rights of liberty and equality as well as the rights of procedure like those guaranteed by the Convention to safeguard human rights and fundamental liberties in line with the common constitutional traditions of the member states, as general principles of community law. The Charter must also contain the fundamental rights reserved to citizens of the Union. In the drawing up of the Charter, it will be necessary moreover to take into consideration economic and social rights such as those spelt out in the European Social Charter and in the Community Charter of the Fundamental Social Rights of Workers (article 136 TCE) to the extent that they do not justify uniquely objectives for EU action.

[3] Information note from the Presidium, January 20, 2000.

[4] The solemn opening of the negotiations took place in London on March 31, 1998. It is envisaged that six states - Poland, Czech Republic, Hungary, Slovenia, Estonia plus Cyprus - will enter in the Union between now and 2004 and a second group - Bulgaria, Lithuania, Latvia, Rumania, Slovakia - before 2007.

[5] Preamble to the Treaty of Rome.