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**The Treaty of Nice, European Union Charter of Fundamental Rights**

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**Abstract:** The enforcement of the Charter of Nice not only offered the more visible image of the basic human rights provided in the European Union Member States, but also established the more solid juridical basis for the protection of human rights, expanded over other fields of activity, e.g. the guarantee of communication security etc. At the same time, the provisions of the Treaty of Nice resulted not only in the modification of the Treaty as regards the European Economic Community, in order to establish the European Community, but also in reaching a new phase in the process of European Integration, engaged through the creation of the European Communities stipulated in the European Union Treaty.

**Keywords:** the human rights; the European Union Treaty; the right to liberty and security

Gathered in Cologne on June 4<sup>th</sup>, 1999, The European Council required that “the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident” (Conclusions, Item 44). This “European Union Charter of Fundamental Rights” (Carlier & De Schutter, 2002) has been published in Nice as a Treaty (Petri & Constantinescu, 2007, p. 10), which has been adopted on December 10, 2000 by 15 state and government leaders of The European Union, and has been signed on February, 2001 during the Session of The European Council gathered in Nice (France). Although this Treaty – entered into force on January the 1<sup>st</sup>, 2003 – has been signed by all the 15 member-states of The European Union, it has not been ratified by all signatory states. For example, the Irish people rejected the Treaty in June, 2001 through a Referendum.

The Treaty of Nice represents – along with other foregoing Treaties, e.g. The Treaty of Maastricht and The Treaty of Amsterdam – a constitutional instrument regarding the human rights, hence the need of knowing and applying the provisions included within its text.

The institutional changes provided by The Treaty of Nice would only have been applied starting with the year 2004. Thus, the new European Parliament elected in June 2004 consisted in 732 members, and the new Commission, which started its mandate in November 2004, only consisted in 25 members.

The agreement concluded in the end of the meeting in Nice has also established the number of the members that would activate in The European Parliament. Thus, Germany would have 99 members; The Great Britain – 72; France – 72; Italy - 72; Spain - 50; Poland - 50; Romania - 33; Netherlands - 25; Greece - 22; The Czech Republic - 20; Belgium - 22; Hungary - 20; Portugal - 22; Sweden - 18;

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Bulgaria - 17; Austria - 17; Slovakia - 13; Denmark - 13; Finland - 13; Ireland - 12; Lithuania - 12; Latvia - 8; Slovenia - 7; Estonia - 6; Cyprus - 6; Luxembourg – 6, and Malta - 5.

The number of votes established within the Council was the following: Germany - 29; The Great Britain - 29; France - 29; Italy - 29; Spain - 27; Poland - 27; Romania - 14; Netherlands - 13; Greece - 12; The Czech Republic - 12; Belgium - 12; Hungary - 12; Portugal - 12; Sweden - 10; Bulgaria - 10; Austria - 10; Slovakia - 7; Denmark - 7; Finland - 7; Ireland - 7; Lithuania - 7; Latvia - 4; Slovenia - 4; Estonia - 4; Cyprus - 4; Luxembourg – 4, and Malta - 3. The overall number of votes is 345.

The European Union Charter of Fundamental Rights (Scăunaș, 2003, pp. 216-222) - signed in Nice in 2000 - stipulates that the “human dignity is inviolable” and “it must be respected and protected” (Art. 1). Thus, we should keep in mind that the human dignity precedes in the text of the Charter *the right to life* that “everyone has” (Art. 2, 1). Actually, the first chapter of the Charter is suggestively entitled “Dignity”. Indeed, the human dignity is situated above the right to life, which is also affirmed by the interdiction of death penalty. “No one shall be condemned – the text of the Charter provides – to the death penalty, or executed” (Art. 2, 2).

As a number of European jurist remarked, The Treaty of Nice did not maintain “... the distinction between the civil and political rights, on the one hand, and the fundamental economical and social rights, on the other, ascertained so far in the European and international documents; the Charter brings together the rights and freedoms around the major principles: the human dignity, freedoms, equality, solidarity, citizenship, and righteousness” (Carlier & De Schutter, 2002, p. 48).

The same Charter provides everyone’s right “for his or her physical or mental integrity”, as well as “the prohibition of eugenic practices, in particular those aiming at the selection of persons”. At the same time, it is prohibited “on making the human body and its parts as such a source of financial gain”. Last but not least, it is prohibited *the reproductive cloning* “of human beings” (Art. 3).

The following Article provides the prohibition of torture and inhuman or degrading treatment or punishment. “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Art. 4).

The slavery and forced labor is also categorically prohibited. “No one shall be held in slavery or servitude” neither can be „required to perform forced or compulsory labor” (Art. 5, 1-2). At the same time, it is prohibited „trafficking in human beings” (Art. 5, 3).

The Chapter II of the Charter signed in Nice includes a number of human freedoms, i.e.:

- a) the freedom of thought, conscience and religion (art. 10);
- b) the freedom of expression and information (art. 11);
- c) the freedom of assembly and association (art. 12);
- d) the freedom of arts and sciences (art. 13);
- e) the freedom to choose an occupation (art. 15);
- f) the freedom to conduct a business (art. 16);
- g) the freedom of movement and residence (art. 45).

Actually, this chapter is entitled “Freedoms”. Together with these *freedoms* a number of fundamental human rights have also been provided, i.e.:

- a) the right to liberty and security (art. 6);
- b) everyone’s right to respect for his or her private and family life, home and communications (art. 7);

- c) everyone's right to the protection of personal data concerning him or her (art. 8);
- d) the right to marry and to found a family (art. 9);
- e) the right to education (art. 14);
- f) the right to property (art. 17);
- g) the right to asylum (art. 18).

Finally, the protection in the event of removal and extradition is also provided. According to the provisions of Article 19, *“the collective expulsions are prohibited. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”*.

From the text of this chapter we should keep in mind the modality and the language used for presenting and defining these freedoms as human rights. For example, the freedom of thought, conscience and religion has been defined as a “right” that *“includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance”* (Art. 10, 1). As regards *“the right to conscientious objection”*, the Charter provides that it *“is recognized, in accordance with the national laws governing the exercise of this right”* (Art. 10, 2).

As regards the freedom to expression, the text emphasizes that it includes *“the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”* (Art. 11). We also should keep in mind from the text of the Charter that *“the academic freedom shall be respected”* (Art. 13), as well as *“... the right of parents to ensure the education and teaching of their children ...”* (Art. 14, 3).

Although entitled “Equality”, the Chapter III also includes certain rights, e.g. the rights of the child (Art. 24), the rights of the elderly (Art. 25), and the rights of the persons with disabilities (Art. 26), which require a special social protection (Dură, 2012, pp. 86-95).

In the session held in Nice it has also been expressively reaffirmed the right of the children “to protection and care as is necessary for their well-being”, hence the obligation of public authorities or private institutions to manifest “a primary consideration” to “child’s best interests” (Art. 24, 1-2), as it has been already stipulated by The Convention of the Rights of the Child (Adolphe, 2003, pp. 131-214).

At the same time, it has been reaffirmed that “The (European) Union recognizes and respects the right of the elderly to lead a life of dignity and independence and to participate in social and cultural life”. As for the persons with disabilities, the Charter mentions their “integration”, hence the necessity that they “to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Art. 26).

Taking into consideration the principle of legal equality, the Charter provides that “Everyone is equal before the law” Art. 20). The same principle of equality is also considered when referring to the equality between men and women, which “... must be ensured in all areas, including employment, work and pay” (Art. 23).

The principle of the unity in diversity, which should be the fundament of The European Community, has also been reaffirmed in Nice in terms of cultural, religious, and linguistic diversity. *“The Union – mentions Article 22 – shall respect cultural, religious and linguistic diversity”*.

Finally, the Chapter III has expressively referred to the non-discrimination (Zlătescu, 2011). According to the provisions of Article 21, “any discrimination based on any ground such as sex, race,

color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited” (Art. 21, 1). At the same time, “*any discrimination on grounds of nationality shall be prohibited*” (Art. 21, 2).

As other European jurists have also remarked, the rights stipulated by the Charter are recognized “... for each human person, regardless his or her nationality or residence place” (Carlier & De Schutter, 2002, p. 48). Nevertheless, we should underline that we are still far from turning into practice this principle of “non-discrimination” in many European States that signed this Treaty.

The fourth Chapter is entitled “Solidarity” and has divers contents (workers’ right to information and collective bargain, the right to accessing the social security assistance, etc.). For the states that signed the Treaty of Nice (2000) the human solidarity is expressed under the following rights:

- a) workers' right to information and consultation within the undertaking, “in the cases and under the conditions provided for by Community law and national laws and practices” (Art. 27);
- b) their right “...to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action” (Art. 28);
- c) everyone’s right “of access to a free placement service” (Art. 29);
- d) every worker’s right “to protection against unjustified dismissal” (Art. 30);
- e) every worker’s right “...to working conditions which respect his or her health, safety and dignity;
- f) the right to paid maternity leave and to parental leave “*following the birth or adoption of a child*” (Art. 33);
- g) the right to social and housing assistance (Art. 34, 3), etc.

In order to guarantee the effective translation into reality of these rights, the Treaty of Nice has also provided a number of practical measures of protection. For example, the prohibition of child labor was put together with the protection of young people at work. “*The employment of children is prohibited, provides Article 32 ... Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education*” (Art. 32).

The familial and professional life has also enjoyed the needed protection. “The family shall enjoy legal, economic and social protection” the Treaty provides (Art. 33). At the same time, everyone shall have the right to “protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices” (Art. 34, 1). The Treaty provides therefore social protection for vulnerable people (Mititelu, 2012, pp. 70-77). Besides, The Treaty of Nice has also stipulated that “... everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices” (Art. 34, 1).

Health protection, ensured in the definition and implementation of “all (European) Union policies and actions” (Art. 35) is also expressively stipulated in the Treaty of Nice; thus, “everyone has the right of

access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices” (Art. 35).

Finally, the Treaty of Nice mentions that “the policies of the Union” also ensures other protections, e.g. the environmental protection (Art. 37), the consumer protection (Art. 38), etc.

The Chapter V is entitled “Citizen’s Rights” and includes the rights of the European Union citizen, i.e.:

- a) right to vote and to stand as a candidate at elections to the European Parliament (art. 39);
- b) right to vote and to stand as a candidate at municipal elections (art. 40);
- c) right to good administration (art. 41);
- d) right of access to documents (art. 42);
- e) right to petition (art. 44) etc.

As regards the good administration, the Treaty of Nice provides that “*Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union*” (art. 41 & 1). At the same time, the Treaty mentions that “*this right includes:*

- *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
- *the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
- *the obligation of the administration to give reasons for its decisions*” (Art. 41, 2).

The Treaty of Nice also provides the right of “*any European Union citizen and any natural or legal person residing or having its registered office in a Member State*” to “access to European Parliament, Council and Commission documents” (Art. 42) and to refer to the Ombudsman of the Union “*cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role*” (Art. 43). At the same time, it is provided “the right to petition the European Parliament” (Art. 44) and the right of every citizen “to move and reside freely within the territory of the Member States” (Art. 45).

Finally, the Treaty also provides the diplomatic and consular protection of every citizen of The European Union “in the territory of a third country in which the Member State of which he or she is a national is not represented, being entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State” (Art. 46).

The final Chapter of the Treaty of Nice is suggestively entitled “Justice”, and provides the right to an effective remedy and, *ipso facto*, the access to an impartial tribunal (Cf. Art. 47); the right not to be tried or punished twice in a criminal proceedings for the same criminal offence (Art. 50); the presumption of innocence and right of defense (Art. 48); and the principle of legality and proportionality of criminal offences and penalties (Art. 49).

We should also underline and emphasize that, in line with the provisions of the Treaty of Nice (2000), the rights and freedoms of the human persons are guaranteed by “the law of the Union” (Art. 47). Therefore, we are faced with a genuine “*legislation*” (jus) of The European Union. Besides, the Treaty stipulates that in line with this legislation every person considering that the rights and freedoms “guaranteed by the law of the Union are violated has the right to an effective remedy before a ...

independent and impartial ... tribunal". What's more, "legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice" (Art. 47). Nevertheless, "Respect for the rights of the defense of anyone who has been charged shall be guaranteed", as long as the charged person "shall be presumed innocent until proved guilty according to law" (Art. 48).

As conclusion, we should remind that the Treaty of Nice (2000) is, as a matter of fact, a Charter of the fundamental rights and freedoms of the human person, whose dignity must be respected and protected by every European Union Member State (cf. Art. 1), hence the contribution of this Treaty to the "constitutionalization of the European Union legislation" (Dumont & Van Drooghenbroeck, 2002, pp. 61-96).

Though the text proclaimed by The European Council in Nice in early 2001 initially had "an interim juridical regime" (Constantin, 2001, p. 14), this does not mean that it was without juridical consequences, as long as it was and still is one of the fundamental documents of The European Union. Besides, the very text of the Charter of Fundamental Rights of The European Union – written in Nice – reveals that for The European Council and European Union Member States the Charter has the general juridical regime for the human rights, on the one hand, and the special regime, on the other, in line with the Union Charter and under the jurisdiction of the Court in Luxembourg. And, as a Romanian jurist remarked, "such regional legal regimes would coexist beyond any doubt with the universal system and the national one (generally in line with the Constitution) that guarantees the fundamental rights" (Constantin, 2001, p. 14).

As regards the legitimacy of this Charter of Fundamental Rights of The European Union, certain Romanian jurists ascertained that we cannot accept the thesis according to which "the citizens of European Community and Union benefit from inferior protection compared to the rights guaranteed by the national legislation (the one that – we should not forget, according to their comments, – includes the specifications guaranteed by CEDO), ...", because "the effective level of protection guaranteed by the Court in Luxembourg through the general principles assimilated to the fundamental rights ..." remains a concrete and "effective" one (Constantin, 2001, p. 17).

As for the proper text of the Charter, the same jurists also mention a number of "originalities". "As novelty – they mention – we find the guarantee for communication security (Art. 7), which replaces the guarantee for mail secrecy; the term of communication is the optimum one". Article 9 (Right to marry and right to found a family) – the same authors underline – has been regarded by the writers as an improved expression of the text presented by Article 12 of CEDO, as "it neither prohibits, nor enforces the marital status of two persons of the same sex" (Constantin, 2001, p. 16).

It has also been considered that the enforcement of the Charter of Nice aimed at:

- a) Ensuring another legal basis for the protection of the fundamental rights, replacing the fundamental principles and the jurisprudence, possibly a juridical basis of primary law (Treaty);
- b) Extending the protection guaranteed to The European Union citizens beyond the protection guaranteed by the existing juridical fundament" (Constantin, 2001, p. 8).

The provisions of the Treaty of Nice resulted not only in the modification of the Treaty as regards the European Economic Community, in order to establish the European Community (Barrau, 2002, p. 15), but also in reaching a new phase in the process of European Integration, engaged through the creation of the European Communities stipulated in the European Union Treaty (Priolland & Siritzky, 2012, p. 15). At the same time, The Charter of Human Rights – included in the Treaty of Nice – has also

brought its contribution to the “constitutionalization of the European Union Law” (Dumont & Van Drooghenbroeck, 2002, p. 61-96).

The enforcement of the Charter of Nice not only offered the more visible image of the basic human rights provided in the European Union Member States, but also established the more solid juridical basis for the protection of human rights, expanded over other fields of activity, e.g. the guarantee of communication security etc. We should also keep in mind that certain articles from CEDO, e.g. regarding the right to marry and the right to found a family, have been updated according to the most recent juridical principles laid down in the Community and international regulations; hence, the “updated format” mentioned by some jurists of the present-day. Finally, we also underline that the *grosso-modo* inclusion of the Treaty of Nice into the Treaty that enforced the Constitution for Europe, alias The European Union Constitution (Kaddous & Picod, 2012), The Charter of Human Rights adopted in Nice in 2000 gained “coercive juridical force and constitutional value” (Michel, 2005, p. 38). Besides, the text of the Treaty of Nice has repeatedly been invoked by The European Union Court of Justice (Carlier & De Schutter, 2002, pp. 40-41) when evoking the collective responsibility of The European Union Members States regarding their fundamental rights.

## References

- Adolphe, J. (2003). *A Light to the Nations: The Holy See and the Convention on the Rights of the Child (Thesis ad Doctoratum in Jure Canonico)*. Roma: Pontificia Universitas Sanctae Crucis.
- Barrau, A. (2002). *La révision des Traités européens par le Traité de Nice. Textes comparés/ The Revision of the EU Treaties by the Treaty of Nice. Compared Texts*. Paris.
- Carlier, J.-Y. & De Schutter, O. (2002). *La Charte des droits fondamentaux de l'Union Européenne. Sa contribution à la protection des droits de l'homme en Europe/ The Charter of Fundamental Rights of the European Union. Its Contribution to the Protection of Human Rights in Europe*. Bruxelles: Bruylant Publishing House.
- Constantin, V. (2001). European Union Charter of Human Rights. *Revista Română de Drepturile Omului/ Romanian Review of Human Rights, No. 21*, pp. 8-19.
- Dumont, H. & Van Drooghenbroeck, S. (2002). La contribution de la Charte des droits fondamentaux de l'Union européenne à la constitutionnalisation du droit de l'Union européenne/ The Contribution of the Charter of Fundamental Rights of the European Union to the Entrenchment of the Right of EU Union. *La Charte des droits fondamentaux de l'Union Européenne/ The Charter of Fundamental Rights of the European Union*. Bruxelles, pp. 61-96.
- Dură, N. V. (2012). The Rights of the Persons who Lost Their Autonomy and their Social Protection. *Journal of Danubius Studies and Research, Vol. II, No. 1*, pp. 86-95.
- Kaddous, Ch. & Picod, F. (2012). *Traité sur l'Union Européenne. Traité sur le fonctionnement de l'Union Européenne/ Treaty on European Union. Treaty on the Functioning of the European Union*. Berne: Staempfli SA.
- Michel, V. (2005). La notion de constitution/ The Notion of Constitution. *Traité établissant une Constitution pour l'Europe. Analyses et commentaires/ Treaty Establishing the Constitution for Europe. Analyses and Comments*. Strasbourg: Presses Universitaires de Strasbourg, pp. 31-60.
- Mititelu, C. (2012). The Human Rights and the Social Protection of Vulnerable Individuals. *Journal of Danubius Studies and Research, Vol. II, No. 1*, pp. 70-77.
- Petri, M. & Constantinescu, V. (2007). Introduction. L' Actualité Inattendue? – Des Traités d'Amsterdam et de Nice/ Introduction. The Unexpected Actuality? – Treaties of Amsterdam and Nice. *Traités d'Amsterdam et de Nice. Commentaire article par article/ Treaties of Amsterdam and Nice. Comment Article by Article*. Paris: Economica.
- Priolland, T. X. & Siritzky, D. (2012). Traité sur l'Union Européenne (révisé par le traité de Lisbonne), Préambule/ Treaty on European Union (as Amended by the Lisbon Treaty), Preamble. *Traités européens après le traite de Lisbonne. Textes comparés/ European Treaties after the Treaty of Lisbon*. Paris.
- Scăunaș, Ș. (2003). *International Law of Human Rights*. Bucharest: All Beck.
- Zlătescu, I. M. (2011). *Protection against Racism and Discriminations*. Bucharest: IRDO.