

Anastasia Iliopoulou-Penot and Lamprini Xenou (Eds.), *La Charte des droits fondamentaux, source de renouveau constitutionnel européen ?*

As underlined by Roman Herzog in his speech given at the first meeting of the European Convention responsible for drawing up the Charter, the adoption of this instrument was not launched with a view to transforming the European Union into a federal state, nor as the first piece of a future “European Constitution” that would be supervised by a Constitutional Court. Three more practical arguments were indeed initially raised in order to support the proclamation, at EU level, of a Charter of Fundamental Rights: the need to strengthen legal certainty by codifying the existing general principles of EU law, the wish to increase the Union’s legitimacy in the eyes of EU citizens and its potential to reinforce the effectiveness of fundamental rights in the EU.

Over time, this predominately utilitarian vision of the Charter has evolved towards more ambitious intentions. In its conclusions adopted on 8 March 2021, the Council of the European Union stated in this vein that the Charter now represents “a milestone of European integration” and “a symbol of our shared European identity”. One should indeed note that much has happened since its formal proclamation in 2000, including its elevation to the status of primary law in 2009 with the Lisbon Treaty.

Anastasia Iliopoulou-Penot and Lamprini Xenou’s edited collection follows this evolution by questioning the potential of the Charter to constitute a “source of constitutional renewal for the European Union”. In the view of this, the editors start with two main questions: *i.* what is, if any, the added value of the EU Charter of Fundamental Rights in the multi-layered landscape of the protection of human rights in Europe? *ii.* in addition to limiting the EU’s potential incursion into individual freedom, does this instrument contribute to the creation of a “founding pact for an emerging political community”? While the editor’s hypotheses developed in the introduction seem rather optimistic, it is clear from the different chapters that make up the book that there is unfortunately still much work to be done for the Charter to play a full role as the *Bill of Rights* of the European Union, both legally and symbolically.

It is true that this instrument has undeniably made an important contribution to the protection of fundamental rights in the EU, and more largely in Europe. The Charter has notably had a major impact on the Union’s legislative process. In his chapter, Jean-Paul Jacqu , a seasoned observer of the EU’s legislative triangle, traces the evolution of the mechanisms that ensure that EU legislative acts comply with the Charter and develops avenues whereby they could be strengthened. From a litigation point of view, the Charter has also gained increasingly in influence before the Court of Justice and national courts, as demonstrated by Fabrice Picod. The impact of this instrument, however, depends on the type of judicial remedy used in order to implement it. Julie Rondu’s analysis shows that the use of the Charter has initiated a rebalancing of asymmetrical horizontal relationships between individuals, particularly those between companies and workers. In line with this, Edouard Dubout offers an in-depth analysis

of the “subjects” to whom the Charter of Fundamental Rights is addressed. As developed by Eleftheria Neframi, the Charter also plays a role in the field of the EU’s external relations. However, the author regrets that more is not being done to promote the protection of fundamental rights on the international scene. The former Vice-president of the European Court of Human Rights, Angelika Nussberger, chooses to focus on how the Charter enriches the case law of the Strasbourg Court. While the European Court of Human Rights may in some cases draw inspiration from the Charter, it must be noted in that regard that differences in interpretation between Luxembourg and Strasbourg are almost inevitable, due to the different objectives pursued by the Council of Europe and the European Union respectively.

If the Charter thus has a major impact on the protection of Fundamental rights in Europe, it still suffers from significant weaknesses that impair its full potential to constitute a constitutional source of a collective identity firmly binding the European political community. Its greatest fragility undoubtedly lies in the fact that the scope of application of this instrument is limited, the contours of which remain, as Antoine Bailleux demonstrates in his excellent contribution, very nebulous. This fragility is further compounded by the difficulties arising from the normative competition between the different levels of fundamental rights protection in Europe. This phenomenon is tackled in depth by several contributions in this edited volume. Francesco Martucci notably retraces the Italian Constitutional Court’s position vis-à-vis the EU protection of Fundamental Freedoms. Along with the German *Bundesverfassungsgericht*, this Court has indeed played a major role in the evolution of EU human rights law, in its often tense dialogue with the Court of Justice. In addition to being weakened at times at national level, the Charter has not always been used to best effect by the European institutions. This is exemplified by John Morijn and Dimitry Kochenov in their contribution, which analyses the way in which the Charter has (or rather has not) been used in the fight for the rule of law.

This book offers a good overview of the major contributions made by the EU Charter of Fundamental Rights, as well as of the challenges it still faces to reach its full potential. Further progress is indeed still needed in order to make the Charter “a reality for all”, as stated as an objective by the Commission in its strategy to strengthen the application of the Charter, published last December.

Cecilia Rizcallah
Brussels, April 2021