

POLICY SUBMISSION

EU Charter of Fundamental Rights

**Response by Combat Poverty Agency
to consultation by European Movement Ireland**

January 2003

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1. Introduction

Combat Poverty Agency is the statutory advisory body to the government on all aspects of economic and social planning in relation to poverty.

We have four statutory functions that relate to policy advice, research, public education and project innovation. We work from an understanding that poverty is not inevitable. Social, economic and political structures and systems cause poverty. These pass on unequal benefits to different groups in society. We particularly welcome the initiative of The European Movement in stimulating debate on the EU Charter for Fundamental Rights and are happy to contribute to it.

Combat Poverty is interested in exploring the relationship between rights and poverty reduction. We consider that a human rights framework is a basis for setting democratic standards that support the full participation of people in social and economic systems and structures. Poverty, and the denial of rights, contributes to the creation of a two-tier society. A two-tier society threatens the overall level of social and economic stability and “well-being” and undermines social solidarity.

A human rights framework, because it supports the empowerment of the poor, is a fundamental support to the involvement of excluded groups in public affairs and, may contribute to reversing otherwise unjust social and economic outcomes for people on the margins of society.

Combat Poverty understands that the findings from this consultation by the European Movement Ireland will be sent in the form of a report to the European Commission.

2. Combat Poverty response to European Movement consultation questions

All questions are addressed with the exception of 3(a) and 4. Priority issues Combat Poverty would wish raise under 3(a) are covered in response to Q2 below. Due to time constraints, we have not given consideration to Q4 on the roles of the European Court of Justice and European Court of Human Rights and the incorporation of Charter.

Q 1: Is a Charter of Fundamental Rights a necessary step to ensure that EU institutions and member states adhere to the principles of fundamental rights in all their actions?

Combat Poverty supports the Charter’s own assertion that fundamental rights will be at the heart of all European law. The rights enumerated in the Charter are based on the fundamental rights and freedoms recognised by various international instruments such as the Council of Europe’s European Social Charter, the European Convention on Human Rights and the UN Covenant on Economic, Social and Cultural Rights.

The values and principles stipulated in the Charter set explicit standards for the administration of power by EU institutions. From the point of view of

poverty reduction, tool such as the Charter, that focus on the potential for economic, social, cultural and political institutions to exercise their power and decision-making in a way that enhances human dignity and greater social justice are extremely positive. Significantly, the EU Charter of Fundamental Rights supports the parity of economic, social, cultural, civil and political rights.

The experience to date demonstrates the practical effect of the Charter on the actions of EU institutions. New (draft) EU legislation is scrutinised for compliance with Charter rights and the Court of First Instance (CFI) and a number of Advocate Generals refer to the Charter in their judgements¹. These developments highlight the emerging potential of the Charter to support adherence to fundamental rights.

Q2: Do the rights enumerated in the Charter (to date) go far enough and will their implementation be a costly exercise?

The Charter represents a compromise outcome from a long debate and negotiation process. Some Member States resisted the equality and solidarity provisions of the Charter. The possibility of redrafting the Charter may risk opening up the dilution of the consensus already achieved in these areas. Nonetheless at some stage the Charter should be subject to revision as the drafting of the Charter is unlikely to have anticipated every issue.

Freedom from poverty is essential to realising other rights. The right to be free from poverty includes the right to:

- An adequate standard of living
- Work and receive wages that contribute to an adequate standard of living
- Live in adequate housing
- Freedom from hunger
- Education
- Participate in shaping decisions that affect oneself and one's community.

These rights are enumerated in the UN Covenant on Economic, Social and Cultural Rights and elsewhere including the Charter. These rights have a direct and immediate influence on the eradication of poverty. The Charter could be strengthened in favour of people living in poverty by giving consideration to the explicit introduction of a right 'to freedom from poverty and social exclusion'. The NAPs/incl process whereby member states now commit themselves to take action through strategies and programmes to reduce and eliminate poverty throughout the EU is a policy expression of states' intentions to build societies free from poverty. The explicit incorporation of a right of citizens to freedom from poverty can contribute to ensuring that anti-poverty policies are shaped by a principle that promotes

¹ British Institute of Human Rights and Liberty. 2002. Written Evidence to the House of Lords European Union Committee Sub-Committee (Law and Institutions).

and acknowledges that the poor have rights – entitlements that give rise to legal obligations on the part of others. A right to freedom from poverty could also underwrite the fact that other rights in the Charter may be crucially dependent on enjoying freedom from poverty.

Notably the Council of Europe's Revised European Social Charter incorporates a right to freedom from poverty and a right to housing.

Poverty is either the expression of or cause of various imbalances in either status or personal situation. To state a right is to ground a claim capable to a greater or lesser extent of offsetting these imbalances. This property of rights is particularly relevant since poverty is, to a considerable extent, a reflection of powerlessness of one sort or another. An imperative in addressing poverty and promoting human development is to bring about a state of affairs in which, as far as possible, people are empowered to be self-reliant and enabled to defend and assert their dignity and the rights which flow from that dignity. Adopting a right to freedom from poverty would help ensure that legitimate claimant groups are not intentionally or unintentionally excluded from the scope of public policy. Knowledge about and assertion of their rights is a crucial way to achieve this.

Implementation costs

The European Court of Human Rights regularly reinforces the indivisibility of civil, political, economic, social and cultural rights. Concerns about the costs of the implementation of rights enumerated in the Charter are most frequently raised regarding economic, social and cultural rights. Depending on the particular right in question, upholding civil and political rights or economic, social and cultural rights can either incur costs or be cost neutral.

Much hesitation about giving more explicit recognition to economic, social and cultural rights probably stems from fear of unsustainable resource claims. However there already exists a considerable body of international and national legislation that enshrine (e.g. UN Covenant on Economic and Social Rights and Irish housing and social welfare legislation). In tandem with such legislation there has grown up a comprehensive range of standards, criteria and expectations as to what is generally considered as a reasonable discharge of the state's responsibilities in the areas in question. Thus the legislator is not faced with unknown terrain when considering the granting of constitutional and/or justiciable status to socio-economic rights such as housing. In addition, much of the cost associated with guaranteeing social rights is already contained in exchequer budgets at national or European levels.

Combat Poverty concurs with the view that to 'be consistent with the argument that we should shy away from rights that have cost implications, we should abandon the European Convention on Human Rights (*to which we are bound* – our italics) and nobody seriously suggests that as an option'².

² Professor Gerard Quinn. February 2002. Address to the National Forum on Europe.

Further, the approach of progressive realisation of rights as prevails in the UN Covenant recognises resource constraints and allows for the realisation of rights over time and the setting of priorities towards realisation with the understanding that minimum essential levels of rights should always be protected.

Policy decisions are frequently made in a context of resource constraints or competing resources. A rights approach is about supporting policies that will have positive outcomes for people in poverty; when resource constraints lead to choosing priorities, people in poverty should be considered. A rights approach is a strong tool and it strengthens the policy commitment as, in a situation of resource constraints, it suggests that it is the entitlement of people in poverty that receives prior attention.

Q3 (b): Are there issues which should not have been incorporated in the current Charter of Fundamental Rights?

The restrictive provision in Article 51 gives cause for concern. The rights enumerated in the Charter are available to citizens of the EU. Article 51 addresses the rights to the institutions of the EU and to the member states only when they are implementing EU law. This infers that exercise of powers by national, regional or local institutions do not, necessarily, have to have regard for the Charter's rights other than when EU law is being implemented.

The undesirable impact of this is a restriction of the protection afforded by the Charter, and a limiting of the effect of fundamental rights promulgated by the EU. The Charter, even if incorporated, would not bind the Member States in their purely domestic activities. Potentially, this may allow the legitimate undermining of the effect of the Charter if states act outside the spirit or letter of the Charter. It also means that there is no obligation on national governments to ensure that all their citizens and residents can have effective access to rights set out in the EU Charter, though states will remain subject to the external supervision of the Council of Europe.

The extent to which people are enabled to defend and assert their dignity and the rights that flow from that dignity is a measure of the effectiveness of instruments that protect and promote rights. Article 51 may impede the effectiveness of the Charter. It may contribute to confusing rather than easing citizens' realisation of rights. The EU or domestic origin of activities by Member States that might be considered to violate the Charter's right may be ambiguous or not readily known by claimants. The European Council aims to bring the EU closer to its citizens. Citizens' understanding and experience of consistency in the relationship between domestic protection of rights and protection afforded by international instruments such as the Charter needs to inform the widest application of the fundamental rights within the EU.

The potential negative implications of a restrictive Article 51 should be reviewed.

Q5: Should a Charter of Fundamental Rights form the basis of an EU constitution?

The Charter currently has the status of a Solemn Declaration adopted by the European Council, the European Commission and the European Parliament. While fundamental rights are protected on the basis that they are an integral part of the principles of Community law, the Charter is not directly binding.

Combat Poverty notes and strongly supports the emerging trend of greater prominence to and competency on issues of equality and solidarity within the EU since the Amsterdam Treaty. The EU is now developing a 'rights culture' and this trend is endorsed by Combat Poverty.

Combat Poverty also welcomes the Irish government's acknowledgement of the 'strong support' for the incorporation of the EU Charter in a new EU Treaty³.

The process of European integration requires the Union to be economically competitive and to create a society based on solidarity with access to social rights for all. EU Treaties predominantly are concerned with economic matters. The parity of economic and social objectives of the EU requires both public visibility and means to effect. The Charter gives public expression to the social values of the EU. One of the important characteristics of adopting a rights approach is that it provides for a formal shared understanding of what type of society we want. The Charter is an important articulation of that shared understanding.

Incorporating the rights available to citizens and residents of the EU in a visible and enforceable manner gives stronger effect to rights as legal obligations as distinct from statement of general principle to be respected. The ongoing process of negotiating a new constitution for the EU provides the best opportunity to incorporate a catalogue of fundamental rights. While incorporation of the Charter (based on current draft) may not significantly extend the EU's competencies, it could impact on the exercise of these competencies and how they are seen and used. It can also provide for accountability and the regulation of power by EU institutions. The incorporation of the Charter extends the trend within the EU of reaching beyond the economic sphere but in a way that lends practical value to the normative status of fundamental rights and in particular to social rights. Combat Poverty concurs that it is now opportune for the fullest incorporation possible in the next EU constitution. The new EU Convention will be a 'constitutional' text and it is appropriate for it to establish fundamental rights common to EU member states.

3. Conclusion

The EU Charter of Fundamental Rights is a framework for setting democratic standards that supports the full participation of people in social and economic systems and structures. Poverty, and the denial of rights, contributes to the

³ 'Cowen calls for lasting EU Treaty'. Irish times 16/103 p11.

creation of a two-tier society. Exclusion from the benefits of wealth creation in the EU may result in the disaffection of excluded groups. A two-tier society threatens the overall level of social and economic stability and “well-being”; undermines social solidarity and impedes progress on European integration.

Fundamental rights are important tools that support change in favour of people who experience inequality, marginalisation and poverty.

A rights approach involves a contract between the state {EU} and citizens. One of the strengths of this understanding is that it protects the weak from the strong.⁴ A rights approach is a mechanism for deciding on the allocation of resources and for prioritising ‘aspects of human nature and social relations’⁵. A human rights framework, because it supports the empowerment of the poor, is a fundamental support to the involvement of excluded groups in public affairs and, may contribute to reversing, otherwise unjust, social and economic outcomes for people on the margins.

A rights approach can contribute much to realising the fullest possible participation in society.

Combat Poverty considers that the Charter of Fundamental Rights, through the strongest possible incorporation, offers important constitutional change within the EU in favour of greater social solidarity and equality.

⁴ Cox R. H. 1998. ‘The Consequences of Welfare Reform: How Social Rights are Changing’. *Journal of Social Policy* Vol 27, 1, 1-16.

⁵ Freedom in Yeates N. 1995. *Social Exclusion, Social Rights and Citizenship: The Contribution of a Social Rights Perspective to Combating Poverty and Social Exclusion*. Dublin: Combat Poverty Agency (unpublished).