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George M. Kraw

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# The Community Charter of the Fundamental Social Rights of Workers

By GEORGE M. KRAW\*

## I. INTRODUCTION

Two hundred years after revolutionary France enacted the Declaration of the Rights of Man,<sup>1</sup> the European Community (EC or the Community) adopted the far reaching, if awkwardly named, Community Charter of the Fundamental Social Rights of Workers (Charter).<sup>2</sup> The Charter sets social standards that the Community, Member States, and businesses must maintain. The Charter protects all Community workers, benefits all its citizens, and likely impacts far beyond the Community's borders.

To date, commentary concerning European integration has concentrated on economic issues. The past year's stunning events in Eastern Europe raise new political questions that the Community as a whole must address. The possible reunification of Germany and the announced desire of Hungary to join the EC demonstrate that European integration is not simply a matter for Western European countries.

Yet, even as the Soviet Bloc crumbles, there is no indication that concepts of social protection, both the Marxist and non-Marxist variety, have lost their appeal. The view that the state is responsible for setting work and living standards and providing opportunities for advancement to all citizens remains widely held throughout Europe.

There is no evidence that the political opposition now forming in Eastern Europe opposes such goals. Even if Eastern Europe replaces its planned economies with a free market system, it does not necessarily fol-

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\* Partner Kraw & Kraw. B.A. 1971, University of California at Santa Cruz; M.A. 1974, University of Berkeley; J.D. 1976, Boalt Hall, University of California at Berkeley.

1. Declaration of the Rights of Man and of the Citizen, *adopted* Aug. 26, 1789, *reprinted in* THE FRENCH DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN AND THE AMERICAN BILL OF RIGHTS: A BICENTENNIAL COMMEMORATION (1989).

2. Community Charter of the Fundamental Social Rights of Workers, Oct. 30, 1989, Comm'n of Eur. Comm., Final Draft No. 9430/2/89 REV 2 SOC 370 (amending *id.*, Oct. 2, 1989, Comm'n of Eur. Comm., 8997/89 SOC 345, COM(89) 471 final) (available through Lafayette Publications, 1701 K Street, NW, Suite 805, Washington, DC 20006, telephone: (202) 463-1992) [hereinafter Charter].

low that these nations' ostensible commitment to comprehensive social protection as a fundamental human right will diminish. This commitment may in fact be strengthened by the general disgust with the privileges enjoyed by the former ruling elite of the East European regimes and the leadership's attendant hypocrisy. It seems most likely that the future regimes will allow market economies, but only in a society fully committed to providing for each citizen's social and economic needs as a matter of right.

Should the emerging political forces in Hungary, Czechoslovakia, and East Germany follow progressive domestic policies while conducting a nonaligned foreign policy, similar political forces in the European Community will likely be strengthened. Removing the military and political threat posed by Eastern Europe will also remove the subversive taint some find in progressive social ideas and allow such ideas a more free and dispassionate hearing in the West. To many, the most attractive of these social ideas is that the state must be more than an insurer of last resort or the provider of basic necessities. Rather, the state has an obligation to be the guarantor of fundamental social rights.

This obligation is the very issue addressed by the draft Charter. The draft contains thirty short paragraphs, divided into two titles: "Fundamental Social Rights" and "Implementation of the Charter."<sup>3</sup> The fundamental rights are gathered into twelve groups:

- (1) Freedom of Movement;<sup>4</sup>
- (2) Employment and Remuneration;<sup>5</sup>
- (3) Improvement of Living and Working Conditions;<sup>6</sup>
- (4) Social Protection;<sup>7</sup>
- (5) Freedom of Association and Collective Bargaining;<sup>8</sup>
- (6) Vocational Training;<sup>9</sup>
- (7) Equal Treatment for Men and Women;<sup>10</sup>
- (8) Information, Consultation, and Participation for Workers;<sup>11</sup>
- (9) Health Protection and Safety at the Workplace;<sup>12</sup>

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3. *Id.* tits. 1, 2.

4. *Id.* tit. 1, paras. 1-3.

5. *Id.* paras. 4-6.

6. *Id.* paras. 7-9.

7. *Id.* para. 10.

8. *Id.* paras. 11-14.

9. *Id.* para. 15.

10. *Id.* para. 16.

11. *Id.* paras. 17-18.

12. *Id.* para. 19.

(10) Protection of Children and Adolescents;<sup>13</sup>

(11) Elderly Persons;<sup>14</sup>

(12) Disabled Persons;<sup>15</sup>

Two prefatory clauses to the Charter succinctly summarize its aims as the further development of the social rights of workers and the consolidation of progress already made. Ultimately, the Charter seeks to harmonize social standards throughout the Community, a necessary step for the further political and social integration of the Community's states.

## II. THE ORIGIN OF THE CHARTER

The Charter represents a step in the process to create a Single European Market by 1992. This process is the culmination of work begun with the creation of the European Community by the Treaty of Rome in 1957.<sup>16</sup> Although proponents of a unified Europe called for full economic integration throughout the post-war period, it was not until the passage of the Single European Act<sup>17</sup> that the task began in earnest. Within three months, the Commission of the European Communities, the EC's executive, produced the White Paper which detailed three hundred obstacles, problems, and miscellaneous matters that required solutions prior to unification.<sup>18</sup> The Commission set 1992 as the deadline for their resolution. To date, more than half of the problems and obstacles have been resolved.<sup>19</sup>

Even before the upheaval in Eastern Europe, there was tremendous momentum for the completion of unification. One distinguished observer believes that the long-term effects of the Single European Act were likely underestimated by all member governments.<sup>20</sup> Perhaps one such

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13. *Id.* paras. 20-23.

14. *Id.* paras. 24-25.

15. *Id.* para. 26.

16. Treaty Establishing the European Economic Community, Mar. 25, 1957, 1988 Gr. Brit. T.S. No. 47 (Cmd. 455) 82 [hereinafter Treaty of Rome] (original version at 298 U.N.T.S. 11). The original signatories of the Treaty of Rome were Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany. They were popularly known as the "Common Market." Political differences between France and Great Britain prevented the latter from joining until 1972. Current membership in the community also includes Denmark, Greece, Ireland, Portugal, and Spain.

17. Single European Act, *opened for signature* Feb. 17, 1986, 30 O.J. EUR. COMM. (No. L 169) 1 (1987).

18. Hoffman, *The European Community and 1992*, 68 FOREIGN AFF. 27, 27-28 (1989). Hoffman is the Douglas Dillon Professor of the Civilization of France and Chairman of the Center for European Studies at Harvard University.

19. *Id.*

20. *Id.*

overlooked possibility was the creation of a Social Charter setting forth minimum social rights; the Single European Act makes no reference to such a document.

The Commission of the European Communities created the Charter. The Commission consists of seventeen officials selected by the Member States, but independent of them.<sup>21</sup> The Commission's dominant figure is its President, Jacques Delors, who exemplifies the ideological and political synthesis of East and West that marks the new Europe. Like many of Poland's Solidarity leaders, Delors, a former official of a French labor union, has been influenced by progressive Roman Catholic thought.<sup>22</sup> From 1969 to 1972 he served as an adviser to Gaullist Prime Minister Chaban-Delmas, but later became a moderate socialist.<sup>23</sup> He then served as the Minister of Finance in Mitterrand's socialist government before being appointed President of the EC Commission in 1984, a post to which he has been subsequently reappointed.<sup>24</sup>

Delors has been one of the moving forces behind the proposed Charter. In May 1989 EC Commissioner for Social Affairs, Vasso Papan-dreou, announced the Commission's intention to create the Charter. The proposal was attacked by British Prime Minister Margaret Thatcher as "a return to the Marxist period."<sup>25</sup> Papan-dreou responded that a charter that guaranteed social rights and insured a social consensus was indispensable to the creation of a single European market.<sup>26</sup> At a meeting in Madrid the following month, the government leaders agreed to "adopt measures necessary to achieve the social dimension of the Single Market, taking account of fundamental social rights."<sup>27</sup> Although the Madrid meeting was criticized by European labor leaders as a step backwards from Papan-dreou's announcement,<sup>28</sup> the Commission continued work on the Charter and completed its draft in late 1989.<sup>29</sup>

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21. *Id.*

22. *Id.* at 32.

23. *Id.*

24. *Id.*

25. Guilford, *Proposed Social Charter Attacked by U.K.*, 1 EUROPE-1992, at 168, 168-69 (May 24, 1989). For an interesting alternative view of the effect of European integration, see Grahl & Teague, *The Cost of Neo-Liberal Europe*, 174 NEW LEFT REV. 33 (Mar./Apr. 1989).

26. Guilford, *supra* note 25, at 169.

27. Guilford, *Unions Criticize Summit on 'Social Charter'*, 1 EUROPE-1992, at 229, 229-30 (July 5, 1989).

28. *Id.* at 230.

29. Charter, *supra* note 2.

### III. LEGAL BASIS FOR THE CHARTER

The Charter contains sixteen prefatory clauses that set forth its legal basis. The drafters specifically refer to the Treaty of Rome provisions on the freedom of movement of workers;<sup>30</sup> the right of establishment;<sup>31</sup> the social legislation,<sup>32</sup> in particular as regards the improvement of the working environment;<sup>33</sup> the development of the dialogue between management and labor at the European level;<sup>34</sup> equal pay for men and women for equal work;<sup>35</sup> a common vocational training policy;<sup>36</sup> economic and social cohesion;<sup>37</sup> and more generally, the approximation of legislation.<sup>38</sup>

The Commission's powers, and those of the EC's other central organs, are set forth in the Treaty of Rome as amended by the Single European Act. Authority for the Charter derives from article 117 of the Treaty of Rome which states:

Member States hereby agree upon the necessity to promote improvement of the living and working conditions of labour so as to permit the equalization of such conditions in an upward direction.

They consider that such a development will result not only from the functioning of the Common Market which will favour the harmonization of social systems, but also from the procedures provided for under this Treaty and from the approximation of legislative and administrative provisions.<sup>39</sup>

The United Kingdom remains opposed to the Social Charter and could seek to prevent implementation of some of the Commission's policy directives. The European Court may have to decide the issue. Under article 100a of the Single European Act, majority votes are allowed on issues that "have as their object the establishment and functioning of the internal market."<sup>40</sup> Of the provisions cited by the Commission in the preface to the Charter, articles 51, 54, 55, 56, 57, 121, and 130d require unanimous approval of actions by Member States;<sup>41</sup> articles 7, 49, and

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30. Treaty of Rome, *supra* note 16, arts. 7, 48-51, at 84, 98-99.

31. *Id.* arts. 52-58, at 99-101.

32. *Id.* arts. 117-22, at 118-19.

33. *Id.* art. 118a, at 118.

34. *Id.* art. 118b, at 119.

35. *Id.* art. 119.

36. *Id.* art. 128, at 120.

37. *Id.* arts. 130a-e, art. 23, at 121-22.

38. *Id.* arts. 100, 100a, 235, at 111-12, 126.

39. *Id.* art. 117, at 118.

40. Single European Act, *supra* note 17, art. 100a, at 8.

41. Treaty of Rome, *supra* note 16, arts. 51, 54-57, 121, 130d, at 99, 100-01, 119, 122.

130e require majority approval.<sup>42</sup> The remaining articles are either the exclusive province of the Commission, or are statements of rights not making reference to either the Council or the Commission.

Article 117 recognizes the vast differences that exist between the "frontier states" (Greece, Ireland, Portugal, and Spain) and the rest of the EC. The frontier states each have per capita incomes that are sixty percent below the Community's average.<sup>43</sup>

Since it is easier for governments to be ostensibly ceding power to an unseen market than to a new supranational authority, it is not surprising that economic integration is much farther along than political unification. Yet, economic integration will inevitably lead to a closing of the political and social differences of the Member States, a fact that the Charter recognizes even as it helps to remove such differences.

#### IV. THE CHARTER'S FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

The Charter is divided into three sections: the prefatory "whereas" clauses, Title I—Fundamental Social Rights, and Title II—Implementation of the Charter. The twelve fundamental social rights are contained in separate sections.

##### A. Freedom of Movement<sup>44</sup>

Freedom of movement is the first right set forth in the Charter. The only restrictions allowed on movement are those justified on grounds of public order, public safety, or public health.<sup>45</sup> Under the Charter any citizen of the Community may engage in any occupation in the Community on the same terms as those applied to nationals of the host country.<sup>46</sup> Nationals and non-nationals will be treated equally as regards employment, working conditions, and social protection.<sup>47</sup>

Furthermore, conditions of residence in all Member States will be harmonized, particularly as they concern family reunification. Obstacles arising from the nonrecognition of certain categories of diplomas or occupational qualifications will be eliminated.<sup>48</sup> The Charter also calls for special attention to improvement of living and working conditions for EC

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42. *Id.* arts. 7, 49, 130e, at 84, 98-99, 122.

43. Hoffman, *supra* note 18, at 33.

44. Charter, *supra* note 2, tit. 1, paras. 1-3.

45. *Id.* para. 1.

46. *Id.* para. 2.

47. *Id.*

48. *Id.* para. 3.

citizens residing in frontier regions.<sup>49</sup>

## **B. Employment and Remuneration<sup>50</sup>**

Every EC citizen shall be free to choose and engage in an occupation according to the regulations governing each occupation, with all employment fairly remunerated.<sup>51</sup> Workers shall be assured a wage sufficient for a decent standard of living.<sup>52</sup> Part-time or short-term work shall be paid on the basis of an equitable reference wage.<sup>53</sup> Although wages may be withheld or seized in accordance with national law, pay should provide subsistence necessary for the worker and his family.<sup>54</sup> Finally, all citizens will have access to public placement services free of charge.<sup>55</sup>

## **C. Improvement of Living and Working Conditions<sup>56</sup>**

The Charter mandates that the development of the internal European labor market must lead to an improvement in the living and working conditions of the EC's workers.<sup>57</sup> Improvements must also address the regulation of procedures for collective layoffs.<sup>58</sup> All workers will have the right to a weekly rest period and an annual leave.<sup>59</sup> Conditions of employment shall be stipulated in law, a collective agreement, or a contract of employment, according to the arrangements in each Community nation.<sup>60</sup>

## **D. Social Protection<sup>61</sup>**

This right guarantees, pursuant to the arrangements in each Member State, all workers shall enjoy adequate levels of social security benefits, whatever the worker's status or the size of the company.<sup>62</sup> The unemployed will receive sufficient resources and social assistance for their particular situation.<sup>63</sup>

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49. *Id.*

50. *Id.* paras. 4-6.

51. *Id.* para. 5.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* para. 6.

56. *Id.* paras. 7-9.

57. *Id.* para. 7.

58. *Id.*

59. *Id.* para. 8.

60. *Id.* para. 9.

61. *Id.* para. 10.

62. *Id.*

63. *Id.*



### E. Freedom of Association and Collective Bargaining<sup>64</sup>

Employers and employees each have the right to join any professional organization or trade union to defend their economic or social interests.<sup>65</sup> Anyone may exercise or renounce this right without personal or occupational damage.<sup>66</sup> This section also recognizes the specific right to negotiate and conclude collective bargaining agreements according to national legislation and practice.<sup>67</sup>

This right is intended to encourage dialogues and relations between employers and workers at the European level. Workers are also given the explicit right to strike, subject to the obligations arising under national practices and collective agreements.<sup>68</sup> Facilitation of the settlement of industrial disputes is encouraged through the establishment and utilization of procedures for conciliation, mediation, and arbitration.<sup>69</sup> The internal legal order of the Member States determines the extent to which these rights apply to the armed forces, the police, and the civil service.<sup>70</sup>

### F. Vocational Training<sup>71</sup>

All Community workers are entitled to continued vocational training throughout their working lives.<sup>72</sup> Public authorities, enterprises, or where appropriate, labor-management groups must establish continuing and permanent training systems.<sup>73</sup> Programs in each country must be open and equally accessible to all Community citizens.<sup>74</sup>

### G. Equal Treatment of Men and Women<sup>75</sup>

Men and women are entitled to equal treatment, and equal opportunities for both sexes are to be developed.<sup>76</sup> Special attention is to be given to the issues of equal pay, access to employment, social protection, education, and vocational training and career development for men and wo-

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64. *Id.* paras. 11-14.

65. *Id.* para. 11.

66. *Id.*

67. *Id.* para. 12.

68. *Id.* para. 13.

69. *Id.*

70. *Id.* para. 14.

71. *Id.* para. 15.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* para. 16.

76. *Id.*

men.<sup>77</sup> This includes the development of programs that enable workers to reconcile their occupational and family obligations more easily.<sup>78</sup>

#### H. Information, Consultation, and Participation for Workers<sup>79</sup>

This is one of the most controversial provisions of the Charter: Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

This shall apply especially in companies or groups of companies having establishments or companies in several Member States of the European Community.<sup>80</sup>

Such information, consultation and participation must be implemented in due time, particularly in the following cases:

- [1] when technological changes which, from the point of view of working conditions and work organization, have major implications for the workforce are introduced into undertakings;
- [2] in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers;
- [3] in case of collective redundancy procedures;
- [4] when transfrontier workers in particular are affected by employment policies pursued by the undertaking where they are employed.<sup>81</sup>

These provisions give workers extensive rights in the management of the company. They follow the pattern set by the Dutch and West German labor laws giving workers the right to participate on the board of directors, and as such are bitterly opposed by industrial groups and the Thatcher government.<sup>82</sup>

#### I. Health Protection and Safety at the Workplace<sup>83</sup>

All workers are guaranteed satisfactory health and safety conditions.<sup>84</sup> Appropriate measures are to be taken to harmonize conditions throughout the Community while maintaining improvements already made.<sup>85</sup>

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77. *Id.*

78. *Id.*

79. *Id.* paras. 17-18.

80. *Id.* para. 17.

81. *Id.* para. 18.

82. Guilford, *supra* note 25, at 168-69.

83. Charter, *supra* note 2, tit. 1, para. 19.

84. *Id.*

85. *Id.*

## J. Protection of Children and Adolescents<sup>86</sup>

The minimum employment age is fifteen, but this is "without prejudice" to more favorable rules, in particular those that provide for vocational training.<sup>87</sup> Those over fifteen who are employed are promised an equitable wage.<sup>88</sup> Each country must establish guidelines for younger workers so that their specific needs for development, vocational training, and access to employment are met.<sup>89</sup> The duration of work will be limited and night work prohibited, except in the case of certain jobs set out in national legislation or regulations.<sup>90</sup>

Following the end of compulsory education, young people are to receive sufficient vocational training to prepare them for their future working life.<sup>91</sup> For young workers, such training must take place during working hours.<sup>92</sup>

## K. Elderly Persons<sup>93</sup>

All retired workers are entitled to a decent standard of living.<sup>94</sup> Individuals who reach retirement age, but are not entitled to a pension and who do not have sufficient income from other sources, are entitled to sufficient resources and to medical and social assistance specifically suited to their needs.<sup>95</sup>

## L. Disabled Persons<sup>96</sup>

All disabled persons, whatever the origin and nature of their disability, are entitled to assistance in improving their social and professional integration.<sup>97</sup> These measures shall include vocational training and must address issues of ergonomics, accessibility, mobility, transportation, and housing.<sup>98</sup>

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86. *Id.* paras. 20-23.

87. *Id.* para. 20.

88. *Id.* para. 21.

89. *Id.* para. 22.

90. *Id.*

91. *Id.* para. 23.

92. *Id.*

93. *Id.* paras. 24-25.

94. *Id.* para. 24.

95. *Id.* para. 25.

96. *Id.* para. 26.

97. *Id.*

98. *Id.*

## V. IMPLEMENTATION OF THE CHARTER<sup>99</sup>

The final four paragraphs of the Charter relate to its implementation.<sup>100</sup> One section obligates the Member States to take all steps necessary to accomplish the guarantees of the Charter either through legislative measures, or by encouraging labor and management to conclude collective bargaining agreements.<sup>101</sup>

The European Commission is directed to present an action program for implementing the guarantees of the Charter and to make regular reports concerning its progress.<sup>102</sup>

As with the Single European Act, the role of the European Commission will be vital to the ultimate effect of the Charter. Given the Commission's activist nature, it will probably take an expansive view of its mandate. If this is the case, the Commission itself may become an independent force for the expansion and protection of social rights within the Community, which in turn may bring it into conflict with business groups and other constituencies. As with the Single European Act, all the consequences of the Charter are not readily foreseeable at the time of adoption.

## VI. CONCLUSION

The Charter is a document of historic importance. Proponents of European integration, although largely driven by liberal economic ideology, are eager to reach agreement with all potential adversaries. Thus, they are willing to embrace progressive concepts of the state's social obligations and workers' rights. Ironically, such social goals are being recognized and accepted throughout the European Community even as both Western and Eastern European socialism move away from economic dogmatism. By building a social consensus, the European Community will facilitate the integration of its members and potentially also the emerging democracies of Eastern Europe. In time, it may even help lead public opinion in the United States to see such comprehensive social protection as a fundamental right of all citizens.

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99. *Id.* paras. 27-30.

100. *Id.*

101. *Id.* para. 27.

102. *Id.* paras. 28-29.

