

# Subsidiarity

**A Contribution to the public hearing on the Charter  
of fundamental rights  
of the European Union on the 27th of April 2000 in Bruxelles**  
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Ladies and Gentlemen,

let me first thank you for giving us the opportunity to speak to you. The discussion on the Charter gives us a chance to let Europe arise in the heads and the hearts of its citizens in a new way - not only as an economic or political executive purpose alliance, but as an actual community of culture, law, and economy – built on a common understanding of the bases and functions of Europe and on the conscious and free agreements of the citizens. In our humble opinion we shall, however, only succeed, if the inclusion of the civil society is not exhausted in this hearing. Today should rather have to form the prelude for a European-wide broad public discussion of the Charter design. This should culminate in a referendum of the citizens in the member states. The Charter has to improve the level of the fundamental right protection and strengthen the democratic participation rights in Europe. This historical chance must not be given away! As an initiative, in which single personalities, organizations and institutions for an up-to-date social organization co-operate, we have made extensive suggestions for the Charter, which are published in the Internet. In the shortness of the time I shall focus on only one item:

## **Subsidiarity**

We suggest to consider the principle of subsidiarity in the formulation of individual fundamental rights more strongly and beyond that to include an article "subsidiarity" in a passage "Principles and functions of the European Union, which result from the fundamental rights". In the Maastricht contract the EU has committed itself to the principle of subsidiarity, which – as formulated in a classic phrasing - has the following meaning: "[...] just as that, which the individual can accomplish out of his own initiative and with his own strength, may not be taken from him and given to the activity of society, thus it violates justice if that, which the smaller and subordinate communities can accomplish and lead to a good end, is being claimed for the broader and super ordinate community [...]".

The confession to subsidiarity includes, which is sometimes overlooked, an obligation concerning the inner order of the associated states, not only referring to their relationship to the Union. In addition, the principle of subsidiarity sets, which is likewise overseen quite often, limits to the activity of the state not only in a vertical direction (the super ordinate public level may not regulate, what can be regulated by a subordinate level), but in a horizontal direction, too:

What can be regulated by the initiative of individually responsible societies, shall and must not be regulated by activities of the state at all. Otherwise the state will be "covered and crushed under too many obligations and liabilities". But it is even more important, that the responsibility of the single competent human being be not "covered and crushed". In this point the principle of subsidiarity connects itself with the principle of the human rights, because these human rights, which to protect is the most distinguished obligation of the states of Europe, make individual humans the starting point and carrier of social organization.

As paragraph 1 of the article "subsidiarity" we suggest the following formulation for the reasons mentioned:

*"(1) the EU and its member states promote a seizing of social functions on free initiative and responsibility in all areas, which the legislator does not reserve to public concerning for mandatory reasons. Public functions are in each case to be assumed and regulated on the lowest possible level."*

The vertical subsidiarity with orientation on the lowest level of possible regulation is to prevent that, to cite a phrase of Roman Herzog, Europe becomes a "a moloch of regulations".

The horizontal subsidiarity is to protect the independence of culture and economics. Therefore we suggest two further paragraphs for the article:

*"(2) the EU and its member states create promoting basic conditions, so that culture can unfold in its varieties freely and self-administered; they protect the principle of public neutrality in relation to different cultural efforts."* (I mark that, with these principles, we also support the suggestions of the European Forum for Freedom in Education and other organizations.)

**Paragraph 3:** *"The EU and its member states protect the principle of the contractual self organization of the economic life; they create suitable basic conditions for an efficient, structurally and regionally balanced, social responsible economy. The EU and its member states do not become economically active themselves; the law regulates exceptions."*

This basic regulation should be completed by a further article, which imposes upon certain concrete obligations to the community of states with the "fulfilment of public functions", which would give security to the citizen that genuine state functions are assumed in as efficient and citizen-friendly a form as possible. These suggestions would, in our opinion, also contribute to improve the acceptance of the Charter and European integration by the citizens of Europe. In all other respects I may refer you again to our further suggestions as published on the WebPages of the convention.

Thank you for your attention!

Translation: Henning Kullak-Ublick