

## **XXIII Conferência Internacional de Lisboa**

### **Sessão temática**

### **Prioridades para a Acção Externa de Portugal**

### **Europa**

### **A Process of Member States' Political Systems Europeanization?**

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#### **Abstract**

This paper argues that the Charter of Fundamental Rights of the European Union is the basis upon which the Commission and the Member States themselves may be Europeanizing the different political systems that co-exist within the Union. The paper distinguishes between the impact of the Charter on post-2004 Member States from the impact on pre-2004 Member States to conclude that the process of Europeanization is very strong on the former and very marginal on the latter.

#### **Europeanization as a process**

Olsen argues that "«Europeanization» is a fashionable but contested concept".[1] This paper draws on Radaelli's formulation that tries to capture many of the contributions to this debate. Europeanization is, then, understood as, processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which first defined and consolidate in the EU policy process and then incorporated in the logic of domestic (...) discourse, political structure and public policy[2].

By adopting this definition, it is possible to assess how far the Charter of Fundamental Rights of the European Union has impacted on the domestic discourses, political structures and public policies of Member States. But before proceeding, another clarification is needed: it is necessary to separate the impact of the Charter on Member States, on the one hand, from the impact on applicant countries, on the other. For if in the first case the Charter has no legal impact, in the second the Charter, having been used by the European Commission to assess the level of compliance with the Copenhagen political criteria[3], had a legally binding impact, as it was necessary for applicant countries to have the political institutions that the Commission considered necessary to start negotiations. Adding to this very specific difference between Member States and applicant countries, a more general point should be considered for in the EU context, europeanization is an interactive process in which member States affected by the process (...) are at the same time the players who initiate and shape the process. (...) [Applicant countries] affected by the process do not have the institutional means to co-determine decisions of the EU that affect them[4].

As becomes clear, in the case of Member States, Europeanization by the impact of the Charter of the European Union will have a lesser impact than on the case of applicant countries, because the Member States are part of the process of policy formation, which means they can influence its content. In the latter case, applicant countries have no input into the policy formation, thus becoming mere receptors of the impact of Europeanization. For these reasons, the two situations are discussed separately.

#### **Europeanization of the Political System in Post-2004 Member States by the use the Charter of Fundamental Rights**

The European Commission uses the Charter of Fundamental Rights as the informal and limited checklist which identifies the elements, or characteristics of democracy that applicant countries have to have in order to fulfil their obligations under the first Copenhagen criterion for enlargement. As Olsen notes in the case of enlargement, the Europeanization process uses a 'rule-following [approach, where] (...) change is normatively driven'[5] where the applicant country has no choice but to change its 'rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms'. [6] In this case, the impact of the elements of the Charter on the political system of applicant countries will be very strong as it is a precondition for the enlargement, i.e. if an applicant country does not comply with the Commission's understanding of the political conditions necessary to become a Member State, then that country will not be allowed to join the European Union. As the Commission uses the Charter of Fundamental Rights to assess the level of compliance of applicant countries with the political requirements of membership, then the transformations that have occurred in the political systems of applicant countries, now Member States, are, in fact, a process of Europeanization of political systems using the Charter as the list of elements necessary for enlargement.

It is possible to argue, therefore, that the political systems of the post-2004 Member States of the European Union, because of the process imposed on them by the political Copenhagen Criteria and the use, by the Commission, of the Charter of Fundamental Rights as the guideline for the assessment of progress towards accession, have experienced a process of Europeanization of their democratic systems.

### **The Europeanization of the Political Systems in Pré-2004 Member States using the Charter of Fundamental Rights**

If the Europeanization of the democratic systems of applicant countries, via the use made by the Commission of the Charter is easy to observe, the same is not true for the Member States of the European Union. The Charter of Fundamental Rights has no legal existence and the democratic obligations that Article 6 of the Treaty of the European Union do not have the same meaning for the European Union institutions let alone to Member States for, as Olsen notes, 'Europeanization in the sense of strong unification is not a practice already brought into existence'. [7]

There is, however, evidence of a very timid process of Europeanization of democratic systems of Member States, using the Charter. This occurs, via national judicial systems, in particular national Constitutional Courts. So far, the Constitutional Courts of Spain, [8] Austria, [9] Portugal [10] and Italy [11] have made references to the content of the Charter when deciding on matters presented before the Courts. These are not, one should underline, a significant number of cases or Courts. But what is significant is the fact that some Constitutional Courts have used a non-legal binding document that has its origins outside national jurisdictions to decide on legal matters of national relevance and origin. As mentioned before, this constitutes evidence, albeit limited, of a process of Europeanization of democratic systems in the pre-2004 Member States. Concluding, it is not possible to know if this process will continue in the future. But one can argue that the Charter, even without any legally binding characteristic has the potential to form the basis of a Europeanization of the democratic systems of European Union Member States.

As seen, the Charter is gradually making its way into the legal and political systems of Member States, either through the pre-accession process, where the Charter was imposed on applicant countries and remained in place after those countries have joined the European Union, or

through the very slow and unsure process of the national incorporation of its provisions into national law through the action of national courts. If the Europeanization of national characteristics of democracy were to continue in this way, a time might come where the national models of democracy would be based on the Charter of Fundamental Rights.

This paper has identified a new influence, arguable a very strong one, on the way that different States organize their political systems. This source of influence is new, for it exists, to a certain extent, outside the State's national structures. If the process of Europeanization of the political systems of the Member States of the European Union continues, one will be looking at the harmonization of what could be argued to be the core basic feature of sovereignty: the way that societies organize themselves so that we can live together in peace.

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[1] Johan Olsen, 'The Many Faces of Europeanization' in *Journal of Common Market Studies*, 40/5, 2002, p. 921. For an interesting literature review on Europeanization, see Claudio Radaelli, 'Europeanization: Solution or Problem' in Michelle Cine and Angela Bourne (ed.) *The Palgrave Guide to European Studies*, Palgrave, 2005

[2] Claudio Radaelli, 'Europeanization: Solution or Problem', *op. cit.*

[3] On the use of the Charter to assess the first criteria on new member States by the Commission see Cruz, Bernardo Ivo, *Making Sense of Democracy: A European Union Model for Member States?*, forthcoming, 2006; The same argument was made, although in a less developed way, on Cruz, Bernardo Ivo, 'Democracy in the New Member States: Is the Commission on the Rights Path?' in *The Journal of European Affairs*, 2/1, February, 2004

[4] Michael Emerson and Gergana Noutcheva, Europeanization as a Gravity Model of Democracy, *CEPS Working Document*, 214/November 2004, p. 5

[5] Johan Olsen, 'The Many Faces of Europeanization', *op. cit.*, p. 927

[6] Claudio Radaelli, 'Europeanization: Solution or Problem', *op. cit.*

[7] Johan Olsen, 'The Many Faces of Europeanization', *op. cit.*, p. 940

[8] Case no 292/2000, 30-11-2000  
in [www.tribunalconstitucional.es](http://www.tribunalconstitucional.es) in [www.tribunalconstitucional.es](http://www.tribunalconstitucional.es).

[9] Case no KR1/00ua, 12-12-2000 in [www.vfgh.gv.at](http://www.vfgh.gv.at).

[10] Case no 90/01, 13-03-2001 and case no 275/02, 19-06-2002  
in [www.tribunalconstitucional.pt](http://www.tribunalconstitucional.pt).

[11] Case no 135/2002, 11-04-2002 in [www.cortecostituzionale.it](http://www.cortecostituzionale.it). See also Francesca Astengo, 'The Europeanization of the Italian Constitutional Court' in *European Integration*, 26/2, 2004, p.p. 125-144.