



E-journal. ISSN 1505-1161. December 2001.

Maciej Bartkowski

Emergence of a European Deliberative Polity

The process of policy-making in the European Union (EU) is considered as being insular and limited to the governments^[1]. Other actors, such as the supranational institutions: the European Commission (hence the Commission), the European Parliament (EP), the Court of Justice, bureaucratic committees of the EU or interest groups may be also recognized as playing important role in EU policy-making^[2]. However, the analyses of EU policies, related to the deliberative practices and the importance of direct participation of citizens in EU policy-making, have been largely absent from the work on European integration^[3]. The European public sphere has been limited to the state officials, representatives of the powerful interest groups or technocrats sitting in the EU bureaucratic institutions. The public has been, by and large, excluded from the EU debates. This remark does not suggest that public opinion has been disregarded or not taken into account. It does, however, mean that the study of EU policy-making has generally failed to recognize the existence and the importance of unrestricted public discussion over certain European issues. This general oversight of the role of citizens' participation in EU policy-making stems from a prevailing perception (equally, among the scholars and ordinary citizens) about insignificance of public participation. Democratic deficit of the European institutions and its procedures is rooted in the very fact that public involvement in EU matters is viewed as being insufficient and meager. Direct elections to the EP do not adequately address the problem of legitimacy, since the role of the Parliament is limited. Real power of decision-making rests in the interactions between non-elected European Commission and indirectly accountable European Council (hence the Council). Generally, the legitimacy crisis of the EU, which so many people, nowadays, talk about, rests on the concept of scarcity of public participation and on the commonly held perception about the remoteness, non-accessibility and non-accountability of the EU institutions to the citizens of the European Union.

At the end of the 1990s, however, the process of policy-making in the EU gained a new momentum. Legitimacy crisis on the EU level, led to the introduction of methods, which would, on one hand, substitute a lack of "elective" European democracy and on the other, strengthen legitimacy of the EU procedures by making them more visible and open for the citizens' scrutiny. Thus, looking for the ways to increase legitimacy of its decisions, the European Union and its supranational institutions started increasingly relying on deliberative modes of policy-making. A recent debate on the European Charter of Fundamental Rights (hence Charter) serves as a striking example of the changes that the EU is going through. No longer can EU policy-making be understood merely as intergovernmental bargaining conducted behind the closed doors of diplomatic conferencing. The EU embarked on deliberation and is gradually turning itself into a European Deliberative Polity.

There are three important claims that this paper intends to make. Firstly, The EU, faced with growing legitimacy crisis, experiments with the new modes of decision-making. These different modes of policy making go beyond the confined boundaries of intergovernmental procedures and even beyond participatory democracy (direct elections) into the sphere of unconstrained public deliberation. This, in turn, leads to the conclusion that the EU may no longer be seen as a procedural-based polity, where decisions are regarded as simple interests' aggregation. Thus, the paper will underline that the EU policy-making processes over some important issues have actually gone towards the ideal type of a European Deliberative Polity, where decisions are publicly contested and argued about on the public "fora". Secondly, while juxtaposing the example of the debate on the Charter with the idea of participation of all the people in public deliberation, a utopian character of a deliberative polity will be challenged. This study will argue that a deliberative polity, contrary to its criticism, is a concept very much alive and can be also reflected in the European "institutional-political reality" [\[4\]](#). Thirdly, this paper will emphasize that the European Deliberative Polity changes the sources of legitimacy from the "will of few" to the "will of many" in the process of inclusion and common will formation.

I will start by presenting the intergovernmental view of the EU policy making, which underlines intergovernmental bargaining as a prevailing mode of decision making within the EU. Then, I will introduce the concept of a European public space and indicate that its existence gives EU policy makers opportunity to open up the process of the decision-making. Subsequently, I will elaborate on a practical use of public deliberative practices in the EU and describe the process of drafting the Charter. I will point out to the public deliberative procedures, according to which the Charter was drafted. Finally, I will talk about legitimacy of decision-making in the EU and conclude that deliberative processes may bring about an effective way of dealing with the EU legitimacy crisis.

The EU seen as a non-democratic polity dominated by self-seeking states engaged in intergovernmental mode of bargaining

The EU is a paradox. The EU is a self-contradictory entity. Although, it is exclusively composed of democratic states, the EU is not a truly democratic institution. Its democratic nature is so weak that if the EU had been a state and applied to join the EU, its application would have been unconditionally rejected as a consequence of having non-democratic (non-elective, non-accountable) culture of policy-making. The democratic deficit on the EU level means that the EU has statist rather than individual characteristics. In other words, due to a relative lack of citizens' participation and openness of the EU processes, the policy-making procedures within the EU polity have been confined to states, whose parochialism determines the nature of policy-making and turns it into interest-based bargaining.

According to the liberal intergovernmental view, the member-states of the EU, like any other states, are utility maximizers. They have already fixed preferences before embarking on tough bargaining with their counterparts. The market-like, egoistic and monological politics dominate the interactions between the states. The politics in the EU is set on the notion of self-oriented states, whose actions match their interests rather than correspond to any concept of a common good [\[5\]](#). In order to reconcile these interests, the states' preferences are gathered under the umbrella of neutral rules and procedures: e.g. European Treaties, which provide a guarantee that the states' interests are taken into account by aggregating them in the process of

decision-making. Thus, the EU is seen as “the system of relations of power”^[6], where the agreements are achieved after a partisan-like, distributive or integrative bargaining.

Both, distributive and integrative^[7], types of bargaining refer to the method of reaching agreement based on rationalist/materialist approach, which, in turn, rests on the concept of participants seen as utility maximizers. The main difference between these two types of bargaining is in the situational-context. Distributive bargaining takes place in the situation of high certainty, where the actors know their range of choices and these choices’ possible outcomes. Integrative bargaining, on the other hand, is placed in the situation of uncertainty over bargaining outcomes and actors’ options. These different situational-contexts have impact on the actors’ preferences, which may, thus, vary in the extent of their “fixed-ness”. Nevertheless, in both bargaining situations, the process of decision-making is reduced to calculations among the states. Although integrative bargaining is more lax than its distributive counterpart on the issue related to the presence of already fixed preferences, both agree that the individual states weigh changes in their preferences against the interests they hold. Bargaining, regardless if is connected with distributive or integrative processes, explicitly or implicitly alludes to the fact that, somewhere in the background, a power relation is always in work. This power relation refers to the situation, in which parties (in international relations, usually, but not always, state representatives) differ among each other in material (economic, military, political) sense. In distributive bargaining, which tends to be more competitive, these differences are openly used as a justification for certain action. At the same time, in integrative bargaining, which is set more on cooperative modes of relations, material differences tend to be hidden and somehow out of sight, however, they are still present in the thinking and behavior of the policy-makers. Thus, in both, distributive and integrative bargaining not the best-argued reasons win but the arguments, which are the most suitable, or at least, the least harmful, to the states’ own interests.

European public space as a conducive environment for the development of public deliberative practices

Liberal intergovernmental understanding of EU policy-making somehow simplifies the mode of policy-making within the EU. The intergovernmental relations do not need to be based on a perception of states as selfish utility maximizers and not always is the communication between the states based on strategic bargaining. The EU is an amalgamate of various state and non state actors, which can both exercise important influence on the EU policies. Decision-making in the EU cannot be confined to the closed-door political bargaining between the state representatives sitting in the Council. The EU is more a process of multilevel governance, where various actors use different spheres and levels to communicate and shape decisions of the EU polity^[8]. Thus, the EU should be perceived not merely as a bargaining-led entity but also as a polity, having *potential* for carrying out a variety of debates, which might be led concurrently on numerous levels, by different groups, over various issues.

These various debates, levels and groups constitute the content of a whole: the European public space^[9]. European public space is understood to mean a European-wide space, shared by all the citizens of the EU, where free and unrestricted communication, guarded by the national and European constitutional (treaty) rights, among others, freedom of expression and the right to form voluntary associations, which are granted to every citizen, transcends the national borders and converges at points and issues, which attract a common European

concern.

The way the European public space is structured makes it a perfect arena for a European-wide deliberation, different in qualitative and quantitative terms from the existing national public spheres. While a representative liberal democracy is set on vertical relations between the state institutions and the citizens, the EU is increasingly relying on networks^[10]. Thus, the EU public space is not something more than a simple aggregation of national public spaces of its member-states or treaty-like procedures and rules, established in order to make collectively binding decisions. Rather than reproducing social segmentation, participation on the EU level is more socially flattened and prone to create the net of horizontally crisscrossed associations, interest groups, advocacy coalitions and various forms of other activism. These groups or associations are mediums of “loosely associated, multiple foci of opinion-formation and dissemination”^[11], which constitute different “publics”^[12]. Thus, the European public space is almost an ideal form of a public space, with a vibrant “communicative structure”, which consists of “a far-flung network of sensors”^[13] with “mutually interlocking and overlapping ... associations of deliberation, contestation and argumentation”^[14]. As a result of a general lack of hierarchies and relatively flattened transnational political and social structures, the European public space, unlike any other national public space, constitutes, with its interactive and opened venues for debating, a political and social area, which is very conducive for public deliberative practices.

A structural framework of a cosmopolitan (European) public space is favorable not only to conduct deliberation but also to conduct them publicly. Thus, the European public space enables technocratic (bureaucratic) or representative (parliamentary) deliberation, which is usually led behind closed doors or in a confined space with a limited number of elected or appointed officials, to turn into a mass or public deliberation. This public deliberation refers to a popular (public) communication, in which the confrontation of different points of views contributes towards familiarization of the arguments of others and sharpening one's own preferences^[15].

The nature of public deliberation in the EU: the Charter of Fundamental Rights

At the June 1999 Cologne Summit, the EU leaders agreed to establish an ad hoc body, called a “Convention”, to draw up an EU charter of fundamental rights. Four months later, in October 1999, the European Council decided on the composition of the Convention. It consisted of sixty-two members. The majority of the members were parliamentarians from the European Parliament (sixteen) and from the member states national parliaments (altogether thirty). Other members included a representative from the Commission and fifteen representatives from the governments of the member states. Additionally, there were four representatives, who held an observer status. Two of them were from the Court of Justice and two from the Council of Europe (including one from the European Court of Human Rights). It was decided that the EU institutions such as the Economic and Social Committee, the Committee of the Regions and the Ombudsman, which were not formally involved in the process of drafting the Charter, were to be invited to provide their opinions^[16]. Additionally, the representatives of the candidate states were also given the right to express their opinions.

The working procedures of this Convention were unlike other processes, which have been usually dominated by an intergovernmental style of decision-making. It was decided that the

hearings, which were to be conducted by the Convention and that the documents submitted at these hearings were to be made public and easily accessible^[17]. In order to increase transparency and provide constant access by the public to the work of the Convention, documentation and debate on drafting the Charter, several web-sites were opened and placed on the official sites of the EU institutions^[18]. A generic e-mail address was provided for the citizens to express their views^[19]. Accessibility to the Convention's work provided opportunities for everybody (equally for non-governmental organizations and ordinary citizens, who were not part of any associations) to freely access the Convention meetings and its written documents. Thus, deliberative practices were institutionalized in the Convention and helped to connect debates on the Charter that were concurrently carried out within and outside the Convention. Due to the existing internet technology, the Convention representatives kept in touch or were, otherwise, informed about the opinions of thousands of outside deliberators. According to the information provided by the Jean Monnet Program, hundreds of NGOs gave their opinions to the Convention on various issues of the Charter. The Convention has received more than 1000 documents from more than 200 different sources^[20]. 70 associations, representing different interests, ("churches and confessional groups, human rights defence leagues, property owners, trade unions, business undertakings, asylum-seekers, associations defending the interests of women, children, and of homosexuals and lesbians, environmental protection groups, etc."^[21]) participated in the hearing, which was prepared by the Convention on 27 April 2000. These organizations, were national and transnational groups, whose offices and representatives operate at the EU level (Brussels and Strasbourg). It proves a viability of a European public space, where the associations, voluntary groups and various other organizations show interests and willingness to participate in deliberation about the European-wide issues.

On the whole, it has been the first time that the process of drafting a document by the EU institutions was so inclusive, opened and conducted in the form of truly public deliberation. The whole drafting process sparked "an authentically European-wide debate among the organizations of civil society"^[22]. It was in stark contrast with the previous ways of leading discussions on the constitutional issues in the EU, which were confined to the boardrooms of the Council, dominated by tough intergovernmental bargaining and "closed diplomacy". Very important and unprecedented steps were taken both to open the process to the members of the European civil society and to encourage much broader participation and deliberation in the European constitutional-like debate. The existence of European public space is strengthened by the electronic media and the new information technology and communication systems, which create "a new kind of public space" crisscrossing the national borders^[23]. The role of the new means of communication was to keep the public informed of the timetable for meetings of the Convention and the issues to be discussed. The web-sites served as a venue for making all the papers submitted during the Convention hearings available to the public and generally, to catalogue any written or oral contributions from outside^[24]. The debate on the Charter was a truly public deliberative undertaking because all the people could take part in deliberation and the deliberation could be easily accessible for those who were interested in participating.

The impact of the first European deliberation: a European Deliberative Polity in the making?

Public deliberation over the Charter effectively served the goals of promoting a rationality of argumentation. This rationality of deliberation rested in the very possibility of exchanging views and criticism and of comparing various reasons used in criticism in terms of their best use of justifications and arguments. The goal of deliberation was to broaden participation, to disseminate information, to help citizens and other actors “to discover their own preferences”[\[25\]](#) and others’ opinions and, finally, to persuade others to one’s own opinion on the basis of qualitative arguments. Additionally, by articulating the views in public helped not only to generate “others”-reflection but also “self”-reflection on one’s own position[\[26\]](#).

Public deliberative practices, which were applied to a specific European issue, involved the collective thinkers rather than selfish utility maximizers, who were committed to “reach a position that takes into account the needs of a larger political community”[\[27\]](#). Public deliberation over the Charter proceeded as a reason-based debate, where persuasion, (rather than bargaining set on cost-benefit calculations and interest aggregation), was a prevailing mode of argumentation. European public deliberative procedures (as any others) can be seen as fostering and strengthening a feeling of collective responsibility among the people. This feeling enabled them (i.e. the governments’ representatives) to give up their national/personal short-term preferences in favor of long-term goals of the whole community. For example, from the beginning, there was a disagreement if the Charter was to be legally binding. And although, the December 2000 Intergovernmental Conference in Nice enacted the Charter as a non-binding document, deliberative procedures of drafting the Charter made an important change. Despite strong opposition voiced against the Charter’s legal character by some governments, later lack of objections of the states to the European Parliament and the Commission declarations, constitutes a significant fact[\[28\]](#). In these declarations, the EU institutions announced that they would act as if the Charter had actually a binding force[\[29\]](#). One of the reasons for the relative silence of the governments’ criticism against initiatives taken by the Commission and the Parliament may be associated with the fact of learning and changing preferences. Public deliberation over the Charter showed strong support for making the document a binding act. Additionally, the Charter acquired strong legitimacy and credibility as a result of a successful use of public deliberative practices. These elements could have played an important role in adjusting (slightly as it may look) the governments’ preferences at least towards the fact that the EU supranational institutions (not the Council) would treat the Charter as something more than a mere political declaration.

European-wide public deliberation is still a rather rare occurrence, but it, nevertheless, makes quick headway to become one of the most important EU policy-making procedures, confirming at the same time the fact of a gradual emergence of a European Deliberative Polity. Public deliberation is likely to become a commonly applied procedures, implemented particularly in connection with the matters of great common (European) interest, such as the issues of future constitutional arrangements of the European Union. Already, the success of deliberative procedures used in the process of drafting the Charter have been recognized by the policy-makers as meriting its application in the nearest future. The arrangements for the 2004 intergovernmental summit will be preceded by the establishment of the Convention, which, while using the same deliberative working methods applied to drafting the Charter, would prepare the option agenda for the summit.

Deliberative practices by all: understanding the character of a European-wide (public)

deliberation on the Charter

Public deliberation is “free” and “unconstrained”, takes place, by definition, in a public realm, concerns common matters and has a universal character, meaning it involves all the people^[30]. The argument against so defined public deliberation is that since the authority’s decisions bear on all, the outcomes of decision-making should represent the will of all the people. In turn, the will of all can be represented if, and only if, all the people are involved in deliberation. And since it is not achievable, deliberative polity remains “irrelevant to practice”^[31].

Universal character of public deliberation cannot, however, imply that unless “all the people” participate in the debate, deliberation is not a meaningful and cannot be seen as a public act. On the contrary, public deliberation for the ordinary citizens is less about obligation to take part in argumentation but rather about willingness to participate. The notion of “universal deliberation”, in this way, does not refer to deliberation by all, but rather deliberation by the willing. Each person, seen as being equal with others, “is recognized as having capacities required for participating in discussion”^[32]. The authorities, on their part, must ensure that the procedures and rules of deliberation are designed in a way that they empower citizens to, rather than discourage them from, participation. Thus, public deliberation is equally about the people’s will to participate and about the “opportunity” to do so provided that certain procedures remain opened and public^[33].

The Convention, which adopted the Charter, by the nature of its institutional composition, might be seen as constituting a limited type of deliberative forum. The Convention was, however, guided by the conclusions of the Tampere European Council (15-16 October 1999), which underlined the principle of transparency of the proceedings. Therefore, from the beginning, the members of the Convention committed themselves to open up the process well beyond its institutional forum in order to include in the debates of the whole European civil society.

The process of European public deliberation on the Charter underlined the importance of pluralist opinions, which were recognized as reasonable^[34] and thus, worthy of attention and consideration. Recognition of reasonable pluralistic values gave a new impetus to the implementation of deliberative practices, which could accommodate reasonable pluralism in a much better and more appropriate way than the liberal intergovernmental procedures have done until now. Only, public deliberation makes possible a genuine reflective convergence of distinct individual understandings by opening policy-making processes to all and, thus, making them inclusive of all interests. The process of drafting the Charter has been carried out between the European citizens and the European policy-makers based on the equality principle, where everyone has been seen as being equal in political and moral sense, and has had equal opportunities to participate in the debate. Those who wished to participate had the chance to do it, those who did not participate, were at least encouraged to do so, by having formal participatory procedures streamlined and by having relatively easy access to the Convention’s documents and established timetables. European deliberation on the Charter was as much inclusive as it was possible in given conditions, where exclusions were reduced to minimum by open (and voluntary) nature of deliberation and by the application of available technology, which enabled and encouraged participation of all EU citizens. Not only were the citizens provided with equal opportunities to express their opinions about the Charter but also

their reasons were given equal consideration. No groups or individuals seemed to protest against any faults of the deliberative procedures applied to drafting the Charter. On the contrary, there were positive comments expressed by various associations and organizations about the way the process followed and a general support for the Convention's acceptance of the Charter and its deliberated provisions[35]. This implies (rather than not) that every view has received equal and adequate consideration from the side of the policy-makers. In the light of the above argumentation, the debate, which took place while the Charter was drafted, conforms to the idea of universalism of public deliberation and is by no means utopian.

Strengthening legitimacy of the EU via public deliberative practices

Today's sources of EU legitimacy are weak because they are mainly indirect, coming from the EU nation-states. The only direct source of legitimacy of the EU institutions is established via directly elected members of the European Parliament. However, the Parliament, as the only fully democratic institution in the EU, has still very limited competencies. Most of the decisions in the EU are based on "factual agreements", which are reached through the existing standard operating procedures and as a result of intergovernmental bargaining[36]. Such liberal (neutral) regulations and procedural practices cannot adequately address the problem of deficit of legitimacy. Therefore, a search for the solution to the current legitimacy crisis has to go beyond the sources of the wills of the national or supranational actors. What the EU needs, is a completely new source of legitimacy. A new source of legitimacy of the EU policies is centered in the *process of common will formation*, which involves a large number of people and organizations; among others, citizens, state and the EU representatives, voluntary association, economic and social organizations.

Legitimacy is shifting its basis from procedurally confined decisions to the ones, which result "from the free and unconstrained public deliberation of all about matters of common concern"[37]. Such deliberately-derived legitimacy "emphasizes active dialogic participation of citizens (...) rather than the sporadic passive procedural participation (voting)"[38], effectively addresses the problem of a general deficit of democratic procedures at the EU level and serves as a countermeasure against "ever lower turn-out of European elections"[39].

Public deliberation enables to establish a standard of legitimacy, which is either based on "reasonable terms of cooperation" or more strongly, on the rational consensus[40]. According to Habermas "only those statutes may claim legitimacy, which can meet with the *assent* (Zustimmung) of all citizens in a discursive process of legislation that, in turn, has been legally constituted"[41]. Cohen also underlines that "deliberation aims to arrive at a rationally motivated *consensus*"[42] (my emphasis). In spite of the suggestions that legitimacy relies on consensus reached via public deliberation, it needs to be underlined that public deliberation is not about consensus itself[43] but rather about the consensual-oriented processes of decision-making, which lead to, but not necessary end up with, consensus. Thus, decisions reached on the basis of deliberative practices are firmly legitimized not as a result of consensual outcomes but rather due to the pure fact that the "parties try to talk themselves into consensus"[44]. Public deliberation on the Charter may not have been concluded with consensus being reached among the citizens and thousands of non-governmental organizations and other voluntary associations. Even, the Charter was accepted by the Convention (although no final vote took place) "only" by near unanimity (60 out of the 62 members supported the document). In both cases, of the public and of the Convention, consensus has not been reached. The essence of

legitimacy of public deliberation cannot be reduced to the issue of public or legislative deliberation ending up (or not) with the established consensus. Thus, European public deliberation means a *quest* for unanimity or consensus rather than the fact of the already existing, deliberately derived, consensual outcomes. Although legitimacy may be effected by the final outcomes of deliberation, however, the more important aspect of public deliberative practices is the *process* itself. Process of public deliberation, in order to be truly consensual, must be filled in by “politically acceptable reasons- reasons that are accepted to others, given...differences of...conviction”[\[45\]](#). Thus, the reasons, which are publicly formulated, “must be communicated in such a way that any other citizen might be able to understand them, accept them, and freely respond to them on his or her own terms”[\[46\]](#). Expressed in this way, such reasons enjoy special legitimacy and “even if there is no unanimity, citizens agree sufficiently to continue to cooperate in deliberation”[\[47\]](#). In other words, as long as the decisions result “from an inclusive and fair process of deliberation in which all citizens may participate and in which they may continue to cooperate freely”[\[48\]](#), consensus (although desirable) is not necessary and legitimacy of the EU institutions and their procedures can still increase substantially, particularly in comparison with confined voting and bargaining systems of decision-making.

Thus, legitimacy of the Convention’s outcomes connected with the Charter provisions stems from the very fact that the whole process was geared towards reaching consensus and was based on reasoned arguments. People were given chance to express their views and contest them one against the other. Common understandings about the Charter provisions were reached as a result of examining (rather than voting on) each other’s reasoned standpoints in the deliberative process, which was directed at concluding agreements on as wide basis as possible.

Conclusion

A narrow-based understanding of the EU decision-making processes, rooted in the liberal intergovernmentalism approach, limits policy-making within the EU merely to interstate bargaining. However, the existence of the European public space leaves the possibility that the intergovernmental way of decision-making may (but not necessary will) transform itself into a more deliberative mode of policy-making.

Despite the existing democratic deficit (or maybe because of it), where the European Parliament has weak powers and the Council and the Commission are still either not directly elected or not elected at all bodies, the EU is gradually turning into an “interlocking net of... multiple forms of associations, networks, and organizations”[\[49\]](#). The existence of multi “plurality of modes of association”[\[50\]](#), whose work and scrutiny is making EU policy-making more open and responsive to the public, have created a “fertile” ground for any deliberative seeds to flourish in the emerging European public space. Drafting of the Charter showed how vigorous was the European public space, which consists of organizations, whose European (transnational) character understood, among other things, in terms of their interest in and concern for the European affairs, assured their active participation in the debate on the Charter.

The way the Charter was drafted showed that the EU no longer could be seen as a merely procedural-based polity, where decisions are regarded as simple interests’ aggregation. The EU policy-making processes have gone beyond the framework of liberal intergovernmental

bargaining. Thus, the EU polity should be increasingly viewed, less in terms of law and administration, with technocratic and expert-like culture dominating the policy-making and more as a popular governance, where the public shapes decisions via the procedures set on the open-for-all deliberative practices. Public deliberation in the EU becomes an important substitution for a relative lack of representative democracy on the supranational level. Judging the success of the public form of policy-making and its effective remedial powers for the legitimacy headache, the EU may be slowly turning itself into a specific European Deliberative Polity, which is constantly in action. The European Deliberative Polity changes the sources of legitimacy from the “will of few” to the “will of many” by widening the number of deliberators. It also strengthens the European public interest over particularistic and narrow-minded national interests. This new European Deliberative Polity has also a very normative character because it provides a basis for democratic legitimacy of the EU and the solutions on how the citizens ought to participate in European deliberation[51].

While referring to the example of the EU and the debate on the Charter, it was shown that a political action could be carried out as a result of public participation via deliberation. Transparent procedures and a specially established for drafting the Charter “deliberative center for contestation and argumentation” (the Convention) provided for invigorating discussion among diverse groups of people. The “accessibility properties” had both, virtual and institutional character and the citizens could freely visit them and express their thoughts and opinions. The deliberative processes over the Charter showed the ways the citizens could have their voices cast in the discussion and demonstrated that the citizens’ opinions received due consideration. They also served as an example that the deliberative practices are more than abstract ideas, which are detached from reality and, indeed, could provide a practical way-out for the polity, which suffers from legitimacy deficit.

FOOTNOTES

[1] According to Moravcsik, the preferences of state representatives, who sit in the European Council, are already determined and fixed as a result of earlier bargaining carried out on the domestic level, which involves governmental actors and various domestic interest groups. Eventually, the governments retain the control over the EU policies and the process of policy-making within EU is confined to liberal intergovernmental bargaining. Moravcsik, Andrew, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, *Journal of Common Market Studies*, vol. 31, no.4 (1993). Andrew Moravcsik, *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*, Cornell University Press (New York 1998). Andrew Moravcsik, A New Statecraft? Supranational Entrepreneurs and International Cooperation, *International Organization*, vol.53, no.2, (Spring 1999).

[2] Participation and the importance of different actors (not only governments), e.g. EU institutions, or transnational interest groups, in the EU policy-making, was underlined by many EU scholars. Here I will just mention few of them: Marks Gary, Liesbet Hooghe and Kermit Blank, European Integration from the 1980s: State-Centric v. Multi-Level Governance, *Journal of Common Market Studies*, vol. 34, no.3 (1996), John Peterson, “Decision-Making in the European Union: Towards a Framework for Analysis,” *Journal of European Public Policy* 2, no.1 (March 1995), John Peterson and Elizabeth Bomberg, *Decision-Making in the European Union* (London: Macmilland Press, 1999), Helen Wallace, William Wallace and Carole Webb, *Policy Making in the European Community*, 2nd ed., Wiley, (Chichester 1983). Mark A. Pollack, The Engines of Integration? Supranational Autonomy and Influence in the European Union, in Wayne Sandholtz and Alec Stone Sweet, *European Integration and Supranational Governance*, Oxford University Press (Oxford 1998). On the role and significance of the European Parliament in the EU policy-making see George Tsebelis, “The Power of the European Parliament as a Conditional Agenda Setter,” *American Political Science Review* 88, no.1 (March 1994). On the autonomy of the European Commission see Mark A. Pollack, Delegation, Agency and Agenda Setting in the European Community, *International Organization* vol. 51, no.1, (Winter 1997). On the power of the EU committee network (comitology) see, for example, Rhys Dogan, Comitology: Little Procedures with Big Implications, *West European Politics*, vol.20, no.3, (July 1997). On the transnational interests in the EU policy making see Beate Kohler-Koch, Organized Interests in European Integration: The Evolution of a New Type of

Governance?, in Helen Wallace, Alasdair R. Young, *Participation and Policy –Making in the European Union*. Clarendon Press (Oxford 1997).

[3] For notable, recent exceptions, which, however, confirm a general rule of a relative scarcity of deliberative analysis in connection with the EU policy-making, see: Erik O. Eriksen, *The Question of Deliberative Supranationalism in the EU*, *ARENA Working Papers*, no.4, 1999. Jeannette Mak, *Dialogue and Deliberation as Informal Ways to Enhance Legitimacy in the EU?* Paper presented to the ECPR Joint Sessions, Copenhagen, 14-19, April 2000. Christian Joerges, *Deliberative Supranationalism-A Defence*, *European Integration Online Papers*, vol.5 (2001), Thomas Risse, *Is Transnational Deliberation Possible in Europe?* Paper prepared for the Conference “Ideas, Discourse, and European Integration”, Harvard University, May 11-12, 2001, Jeffrey T. Checkel, *Taking Deliberation Seriously*, Paper prepared for the Conference “Ideas, Discourse, and European Integration”, Harvard University, May 11-12, 2001.

[4] One of criticism against deliberative practices is their utopian, non-reachable universal character. See Seyla Benhabib, *Deliberative Rationality and Models of Democratic Legitimacy*, *Constellations*, vol.1, (1994): 41-45 and Joshua Cohen, *Deliberation and Democratic Legitimacy*, in Alan. Hamlin and Philip. Pettit, *The Good Polity*, Oxford University Press (Oxford 1991):30-31.

[5] Such explanation is similar to the rationalist interpretation of international relations, which are dominated by interest-oriented states. Moravcsik’s liberal intergovernmental theory, which is applied to the EU policy-making analysis, is a rough equivalent of the aforementioned rationalist thinking in the international politics.

[6] Chantal Mouffe, *Democracy, Power, and the “Political”* in Benhabib (1996): 254.

[7] Here, distributive and integrative bargaining means specific approaches to bargaining or negotiation, applied by the states, where distributive bargaining is connected with the attempts by the states, having short-term interests “in mind”, to *divide something up*, whereas integrative bargaining implies that the states may resist the realization of its shortsighted interests in order to *make more of something* later on. Thus, integrative bargaining more than its distributive counterpart leaves the door opened for the changes in the states’ preferences during the intergovernmental debates based, for example, on persuasion. However, as it will be argued, both bargaining modes have more in common than not and are based on power relations, where the states’ interests still play a crucial role in formulating arguments and reasons for particular actions.

[8] More on the various levels of interactions in the EU, involving state and non-state actors see Marks Gary, Liesbet Hooghe and Kermit Blank, *European Integration from the 1980s: State-Centric v. Multi-Level Governance*, *Journal of Common Market Studies*, vol. 34, no.3 (1996).

[9] The fact of the presence of European public space was already elaborated somewhere else. It is suffice to underline, here, that the existence of European Public Space should not be questioned on the basis of a lack of “strong European identities or common language”. Federal systems (i.e. Switzerland) may be as cultural and linguistically different as is the EU polity. More on the argument for the existence of a truly European public space see Thomas Risse, *Is Transnational Deliberation Possible in Europe?*, Paper prepared for the Conference “Ideas, Discourse, and European Integration”, Harvard University, May 11-12, 2001.

[10] The literature on the networks and networking in connection with the EU policy-making is rich. Here, it will be suffice to refer to only some works on this topic: Jeremy Richardson, *EU Water: Uncertain Agendas, Shifting Networks and Complex Coalition*, *Environmental Politics*, vol.3, no.4, (Winter 1994), Renaud Dehousse, *Regulation by Networks in the European Community: the Role of European Agencies*, *Journal of European Public Policy*, vol.4, no.2, (June 1997), Rainer Eising and Beate Kohler-Koch, *Network Governance in the European Union*, in Beate Kohler-Koch and Reiner Eising, *The Transformation of Governance in the European Union*, Routledge, (London 1999).

[11] Benhabib (1994): 35.

[12] A plural term “publics” underlines the fact that deliberation proceeds in different types of organizational frameworks: voluntary associations, social movements, citizens or organizations. See James Bohman, *Public Deliberation: Pluralism, Complexity and Democracy*, MIT Press (Cambridge 1996), Emily Hauptmann, *Deliberation=Legitimacy=Democracy*, Review Essay, *Political Theory*, vol.27, no.6, (December 1999):857-861, and Benhabib (1994):39.

[13] Habermas in Benhabib (1996):29.

[14] Benhabib (1994): 35. This optimistic picture about the dynamic European public space should be understood from a certain perspective. Still, the main center of decision-making in the EU is the Council with its hundreds bureaucratic committees, which are very much detached from the European public space. Only recently has the Council agreed to use the opportunities given by the existence of the European public space in order to lead open and public debate over the EU constitutional issues, which raise a common European concern. Otherwise, the policy-making within EU can still be considered as being confined to the intergovernmental modes of bargaining, despite the existence of the European public space.

[15] See Bernard Manin, On Legitimacy and Political Deliberation, *Political Theory*, vol.15, no.3, (August 1987): 351. Adam Przeworski, Deliberation and Ideological Domination, in Jon Elster, *Deliberative Democracy*, Cambridge University Press (Cambridge 1998):140, Susan C. Stokes, Pathologies of Deliberation, in Elster (1998):123.

[16] European Union: Procedure and Calendar for Charter of Fundamental Rights. *European Report*, July 21, 1999.

[17] See the conclusions of the Tampere European Council, October 15-16, 1999.

[18] The sites, where the public could keep trace of a discussion on drafting the Charter were opened on the official web-sites of the main EU institutions:

European Commission: http://europa.eu.int/comm/justice_home/unit/charte/index_en.html,

European Parliament: http://www.europarl.eu.int/charter/civil/civil0_en.htm,

European Council: <http://db.consilium.eu.int/df/default.asp?lang=en>,

The role of the new means of communication (particularly internet sites) was to keep the public informed of the timetable for meetings of the Convention and the issues to be discussed. The web-sites served as a venue for making all the papers submitted during the Convention hearings available to the public and generally, to catalogue any written or oral contributions from outside.

[19] fundamental.rights@consilium.eu.int.

[20] www.jeanmonnetprogram.org.

[21] See European Commission: http://europa.eu.int/comm/justice_home/unit/charte/index_en.html,

[22] Erik Eriksen, John Erik Fossum and Menendez, The Chartering of Europe, *Arena Report*, no.8/2001.

[23] Erik O. Eriksen, The Question of Deliberative Supranationalism in the EU, *ARENA Working Papers*, no.4, 1999 and Sonja Bugdahn, Shifting the Balance of Power? Information Society and its Impact on Trans-national and EU Governance, Paper presented at the Ionian Conference "Facing the Challenges of the Millennium", Corfu, Greece, May 20-22, 2000.

[24] Draft Charter of fundamental rights of the European Union. Introduction to the Internet site, European Council: <http://db.consilium.eu.int/df/default.asp?lang=en>

[25] Bernard Manin, On Legitimacy and Political Deliberation, *Political Theory*, vol.15, no.3, (August 1987):352.

[26] Sometimes only public verbalization of an opinion makes a person aware (even before having received any external feedback) about different aspects of the problem, he or she just spoke about.

[27] Jorge M. Valadez, *Deliberative Democracy. Political Legitimacy, and Self Determination in Multicultural Societies*, Westview Press, (Oxford 2001):39.

[28] This fact is even more significant and, somehow, surprising if one interprets the decision of the European Council of

Cologne as an insistence that the Charter was “neither part of the EC or the EU Treaty, *nor subject to an independent international organ for its application*” (my emphasis), see Christoph Engel, The European Charter of Fundamental Rights. A Changed Political Opportunity Structure and its Normative Consequences, *European Law Journal*, vol.7, no.2, (June 2001):152.

[29] Acting as if the Charter was a binding document means, for example, for the Commission, that “every proposal for legislation and every Regulation submitted for adoption by the Commission will undergo prior review for compatibility with the Charter at the time such legislation is drawn up. In addition, proposals or regulations, which effect fundamental rights will require a formal declaration of compatibility in the form of the insertion of an additional ‘Whereas’ clause in the preamble, whether that significance is identified by the Commission services, or is reported by the Member States or by individuals in the course of drawing up the proposal”. Commission to Apply Charter of Fundamental Rights. *European Report*, March 14, 2001.

[30] Benhabib (1994):26.

[31] Benhabib (1994):41.

[32] Joshua Cohen, Procedure and Substance in Deliberative Democracy, in Benhabib (1996): 96.

[33] John S. Dryzek, Legitimacy and Economy in Deliberative Democracy, *Political Theory*, vol.29, no.5, (October 2001):652.

[34] The citizens’ opinions are viewed as reasonable because equal and free members of a society hold “distinct understandings of value, each of which is fully reasonable”. Joshua Cohen, Moral Pluralism and Political Consensus, David Copp, Jean Hampton and John E. Roemer, *The Idea of Democracy*, Cambridge University Press, (Cambridge 1993):281.

[35] See Gráinne de Búrca, The Drafting of the EU Charter of Fundamental Rights, particularly, page 6, www.law.columbia.edu/governance.

[36] See Erik Oddvar Eriksen and John Erik Fossum, The EU and Post-National Legitimacy, ARENA Working Papers, no.26, 2000.

[37] Seyla Benhabib, Toward a Deliberative Model of Democratic Legitimacy in Benhabib, (1996):68.

[38] Jeannette Mak, Dialogue and Deliberation as Informal Ways to Enhance Legitimacy in the EU? Paper presented to the ECPR Joint Sessions, Copenhagen, (April 2000): 8.

[39] Ibid.

[40] James Bohman, Deliberative Democracy and Effective Social Freedom: Capabilities, Resources, and Opportunities in James Bohman and William Rehg, *Deliberative Democracy. Essays on Reason and Politics*, The MIT Press, (Cambridge 1997):323.

[41] Jürgen Habermas, *Between Facts and Norms Contributions to a Discourse Theory of Law and Democracy*, The MIT Press, (Cambridge 1996): 110.

[42] Joshua Cohen, The Economic Basis of Deliberative Democracy, *Social Philosophy and Policy*, vol.6, (1989):33.

[43] Cohen, actually, admitted later that “even an ideal deliberative procedure will not, in general, produce consensus”, Cohen in Benhabib (1996):100.

[44] Eriksen (1999):7.

[45] Cohen in Benhabib (1996):102.

[46] James Bohman, *Public Deliberation Pluralism, Complexity, and Democracy*, The MIT Press (Cambridge 1996): 26.

[47] Ibid.

[48] Ibid., 184.

[49] Benhabib in Benhabib (1996):73-74.

[50] Benhabib (1994):35.

[51] This participation “ought to” be based on well-reasoned argumentation, where deliberators should take under consideration the interests, views and opinions of other people. Similar account of the normative value of deliberation but connected with a deliberative democracy, not with the EU as such, is given by Iris Marion Young, *Activist Challenges to Deliberative Democracy*, *Political Theory*, vol.29, no.5, (October 2001):672.

BIBLIOGRAPHY

Benhabib Seyla, *Deliberative Rationality and Models of Democratic Legitimacy*, *Constellations*, vol.1, (1994)

Benhabib Seyla, *Toward a Deliberative Model of Democratic Legitimacy* in Seyla Benhabib, *Democracy and Difference. Contesting the Boundaries of the Political*, Princeton University Press, (New Jersey 1996)

Bohman James, *Public Deliberation Pluralism, Complexity, and Democracy*, The MIT Press (Cambridge 1996)

Bohman James, *Deliberative Democracy and Effective Social Freedom: Capabilities, Resources, and Opportunities* in James Bohman and William Rehg, *Deliberative Democracy. Essays on Reason and Politics*, The MIT Press, (Cambridge 1997)

Bugdahn Sonja, *Shifting the Balance of Power? Information Society and its Impact on Trans-national and EU Governance*, Paper presented at the Ionian Conference “Facing the Challenges of the Millennium”, Corfu, Greece, May 20-22, 2000

Checkel Jeffrey T., *Taking Deliberation Seriously*, Paper prepared for the Conference “Ideas, Discourse, and European Integration”, Harvard University, May 11-12, 2001

Cohen Joshua, *The Economic Basis of Deliberative Democracy*, *Social Philosophy and Policy*, vol.6, (1989)

Cohen Joshua, *Deliberation and Democratic Legitimacy*, in Alan. Hamlin and Philip. Pettit, *The Good Polity*, Oxford University Press (Oxford 1991)

Cohen Joshua, *Procedure and Substance in Deliberative Democracy*, in Seyla Benhabib, *Democracy and Difference. Contesting the Boundaries of the Political*, Princeton University Press, (New Jersey 1996)

Copp David, Hampton Jean and Roemer John E., *The Idea of Democracy*, Cambridge University Press, (Cambridge 1993)

de Búrca Gráinne, *The Drafting of the EU Charter of Fundamental Rights*, particularly, page 6, www.law.columbia.edu/governance.

Dehousse Renaud, *Regulation by Networks in the European Community: the Role of European Agencies*, *Journal of European Public Policy*, vol.4, no.2, (June 1997)

Dryzek John S., *Deliberative Democracy and Beyond. Liberals, Critics, Contestations*, Oxford University Press (Oxford 2000)

Dryzek John S., *Legitimacy and Economy in Deliberative Democracy*, *Political Theory*, vol.29, no.5, (October 2001)

Engel Christoph, *The European Charter of Fundamental Rights. A Changed Political Opportunity Structure and its Normative Consequences*, *European Law Journal*, vol.7, no.2, (June 2001)

European Union: *Procedure and Calendar for Charter of Fundamental Rights*. *European Report*, July 21, 1999

- Eriksen Erik Oddvar and Fossum John Erik, The EU and Post-National Legitimacy, ARENA Working Papers, no.26, 2000
- Eriksen Erik O., The Question of Deliberative Supranationalism in the EU, *ARENA Working Papers*, no.4, 1999
- Eriksen Erik, Fossum John Erik and Menendez, The Chartering of Europe, *Arena Report*, no.8/2001
- Gary Marks, Hooghe Liesbet and Blank Kermit, European Integration from the 1980s: State-Centric v. Multi-Level Governance, *Journal of Common Market Studies*, vol. 34, no.3 (1996)
- Habermas Jürgen, *Between Facts and Norms Contributions to a Discourse Theory of Law and Democracy*, The MIT Press, (Cambridge 1996)
- Habermas Jürgen, Three Normative Models of Democracy, in Seyla Benhabib, *Democracy and Difference. Contesting the Boundaries of the Political.*, Princeton University Press, (New Jersey 1996)
- Joerges Christian, Deliberative Supranationalism-A Defence, *European Integration Online Papers*, vol.5 (2001)
- Mak Jeannette, Dialogue and Deliberation as Informal Ways to Enhance Legitimacy in the EU? Paper presented to the ECPR Joint Sessions, Copenhagen, 14-19, April 2000
- Manin Bernard, On Legitimacy and Political Deliberation, *Political Theory*, vol.15, no.3, (August 1987)
- Moravcsik Andrew, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, *Journal of Common Market Studies*, vol. 31, no.4 (1993)
- Moravcsik Andrew, *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*, Cornell University Press (New York 1998)
- Moravcsik Andrew, A New Statecraft? Supranational Entrepreneurs and International Cooperation, *International Organization*, vol.53, no.2, (Spring 1999)
- Mouffe Chantal, Democracy, Power, and the “Political” in Seyla Benhabib, *Democracy and Difference. Contesting the Boundaries of the Political.*, Princeton University Press, (New Jersey 1996)
- Peterson John, “Decision-Making in the European Union: Towards a Framework for Analysis,” *Journal of European Public Policy* 2, no.1 (March 1995)
- Peterson John and Elizabeth Bomberg, *Decision-Making in the European Union* (London: Macmilland Press, 1999)
- Pollack Mark A., The Engines of Integration? Supranational Autonomy and Influence in the European Union, in Wayne Sandholtz and Alec Stone Sweet, *European Integration and Supranational Governance*, Oxford University Press (Oxford 1998)
- Pollack Mark A., Delegation, Agency and Agenda Setting in the European Community, *International Organization* vol. 51, no.1, (Winter 1997)
- Przeworski Adam, Deliberation and Ideological Domination, in Jon Elster, *Deliberative Democracy*, Cambridge University Press (Cambridge 1998)
- Richardson Jeremy, EU Water: Uncertain Agendas, Shifting Networks and Complex Coalition, *Environmental Politics*, vol.3, no.4, (Winter 1994)
- Risse Thomas, Is Transnational Deliberation Possible in Europe? Paper prepared for the Conference “Ideas, Discourse, and European Integration”, Harvard University, May 11-12, 2001

Stokes Susan C., Pathologies of Deliberation, in Jon Elster, *Deliberative Democracy*, Cambridge University Press (Cambridge 1998)

Tsebelis George, "The Power of the European Parliament as a Conditional Agenda Setter," *American Political Science Review* 88, no.1 (March 1994)

Valadez Jorge M., *Deliberative Democracy. Political Legitimacy, and Self Determination in Multicultural Societies*, Westview Press, (Oxford 2001)

Wallace Helen, Wallace William and Webb Carole, *Policy Making in the European Community*, 2nd ed., Wiley, (Chichester 1983)

Young Iris Marion, Activist Challenges to Deliberative Democracy, *Political Theory*, vol.29, no.5, (October 2001)

OTHER SOURCES:

European Charter of Fundamental Rights: the official web-sites of the main EU institutions:

European Commission: http://europa.eu.int/comm/justice_home/unit/charte/index_en.html,

European Parliament: http://www.europarl.eu.int/charter/civil/civil0_en.htm,

European Council: <http://db.consilium.eu.int/df/default.asp?lang=en>,

(c) Rubikon 2001. All rights reserved.