

CHARTER OF DIGITAL RIGHTS: PRELIMINARY CONSIDERATIONS

Human dignity, the inviolable rights inherent thereto, the free development of personality, and respect for the law and the rights of others, are the foundations of political order and social peace. This concise formulation in the Spanish Constitution expresses a conception of the individual and the State valid for the present moment and for the future. The resounding progress of scientific research, inventions and digital or digital-based technologies raise the need to ensure that the regulatory framework guarantees the protection of the individual and collective rights of persons and of the constitutional values that are the only possible foundation for coexistence.

The present proposal for a Charter of Digital Rights, drawn up by the Group of Experts¹ set up by the State Secretariat for Digitalization and Artificial Intelligence (SEDIA – Spanish acronym) of the Ministry of Economic Affairs and Digital Transformation, is built on the aforesaid foundation. We live in a digital society and we increasingly depend on the digital environment, devices and services. In this context, it is not necessarily a question of discovering digital rights under the pretence that they are something other than the fundamental rights already recognized, or that the new technologies and the digital ecosystem are by definition a source of new rights. The individual and their dignity is the permanent and sole source of these rights, and the final objective is to project the current legislation on the technological reality, as well as for the public authorities to define public standards and policies to guarantee and promote said rights.

However, the development and progressive generalization of these technologies and of the digital spaces of communication and interaction which they open up give rise to new scenarios, contexts and conflicts that must be resolved by adapting rights and systematically interpreting the law in order to protect the constitutional values and provisions and the legal certainty of citizens, economic operators and public administrations in their respective scopes of authority. Situations and scenarios that are created with but that are not limited to the internet, which, however important it may be, does not in itself exhaust or condense the entire scope and dimensions of the digital environment, space or ecosystem.

Thus, the Charter of Digital Rights presented here does not seek to discover new fundamental rights, but rather to specify the most significant ones in the digital environment and spaces, or to describe instrumental or ancillary rights pertaining to such fundamental rights. It is a naturally dynamic process given that the digital environment is in constant evolution with consequences and limits that are not easy to predict.

This text is based on the notable progress already made in Spain in recognizing digital rights, noteworthy among which is Title X of Organic Law 3/2018 of 5 December, on Personal Data Protection and Digital Rights, and the recently approved Royal Decree-Law 28/2020 of 22 September, on distance working.

In this respect, it is important to emphasize that this Charter is subject to and understood without prejudice to the legal system in force, especially with regard to rights, the provisions of

¹ The outcome of the Group's work does not imply consensus among its members on each and every aspect dealt with. Such members do not necessarily share all the proposals contained therein, nor does the outcome compromise the individual opinions or positions held by the experts within the working groups.

which shall be applicable, including, in particular, those established by the aforesaid legislation, as well as the following:

- a) Organic Law 1/1982 of 5 May, on the civil protection of the right to honour, personal and family privacy and self-image;
- b) Organic Law 2/1984 of 26 March, regulating the right to correction;
- c) Act 34/2002 of 11 July, on information society services and electronic commerce.

Nevertheless, the rapidly changing nature of the digital environment makes it necessary to ensure the existence of an open process of reflection to improve the adaptation of the legal framework to the new circumstances.

The objective of the Charter is descriptive, forward-looking and prescriptive. It is descriptive of the digital contexts and scenarios that determine conflicts, sometimes unexpected, between rights, values and goods which have always existed, but which require new deliberation. This mere description helps to visualize and become aware of the impact and consequences of digital environments and spaces. It is forward-looking in the sense that it anticipates future scenarios that can already be predicted. And it is prescriptive by revalidating and legitimizing the principles, techniques and policies that, on the basis of the very culture of fundamental rights, must be applied in those present and future digital environments and spaces.

The Charter is not normative in nature, but aims to recognize the very new challenges of application and interpretation that the adaptation of rights to the digital environment poses, and to suggest principles and policies relating thereto in this context. Alongside this, it also proposes a reference framework for the action of the public authorities in such a way that, being shared by all (as a continuation of the basic principles which inspire the Spanish Constitution), it allows navigation in the digital environment in which we find ourselves, taking advantage of and developing all its potentialities and opportunities whilst averting its risks. Furthermore, it contributes to the reflection processes taking place at the European level and, with this, to leading an essential process at the global level to guarantee a humanist digitalization, putting people at its heart.